

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 5\*

Short Title: Unemployment Insurance Technical Changes. (Public)

Sponsors: Representatives Howard, Arp, Warren, and Setzer (Primary Sponsors).

Referred to: Commerce and Job Development, if favorable, Finance

January 26, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO  
THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE JOINT  
LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

The General Assembly of North Carolina enacts:

**PART I. DISASTER UNEMPLOYMENT INSURANCE**

**SECTION 1.(a)** G.S. 96-1(b) is amended by adding a new subdivision to read:

**"§ 96-1. Title and definitions.**

...

(b) Definitions. – The following definitions apply in this Chapter:

(14a) Federal disaster declaration. – Declaration of a major natural disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, provided that the declaration allows disaster unemployment assistance under the federal act.

...."

**SECTION 1.(b)** G.S. 96-11.3(b)(2) reads as rewritten:

**"§ 96-11.3. Noncharging of benefits.**

...

(b) To Any Base Period Employer. – Benefits paid to an individual may not be charged to the account of an employer of the individual if the benefits paid meet any of the following descriptions:

...

(2) They were paid to an individual for unemployment due directly to a ~~major natural disaster declared by the President pursuant to the Disaster Relief Act of 1970, and the individual receiving the benefits would have been eligible for disaster unemployment assistance under this federal act if the individual had not received benefits under this Chapter.~~ covered by a federal disaster declaration."

**SECTION 1.(c)** G.S. 96-14.1(b) reads as rewritten:

**"§ 96-14.1. Unemployment benefits.**

...

(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment benefits, register for work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a one-week waiting period for each claim ~~filed.~~ filed, except no waiting period applies under this



1 subsection to a claim for unemployment due directly to a disaster covered by a federal disaster  
2 declaration. A valid claim is one that meets the employment and wage standards in this subsection  
3 for the individual's base period. A valid claim for a second benefit year is one that meets the  
4 employment and wage standards in this subsection since the beginning date of the prior benefit  
5 year and before the date the new benefit claim is filed:

6 ...."

7 **SECTION 1.(d)** G.S. 96-14.9 is amended by adding a new subsection to read:

8 "**§ 96-14.9. Weekly certification.**

9 (a) Requirements. – An individual's eligibility for a weekly benefit amount is determined  
10 on a week-to-week basis. An individual must meet all of the requirements of this section for each  
11 weekly benefit period. An individual who fails to meet one or more of the requirements is  
12 ineligible to receive benefits until the condition causing the ineligibility ceases to exist:

13 (1) File a claim for benefits.

14 (2) Report as requested by the Division and present valid photo identification  
15 meeting the requirements of subsection (k) of this section.

16 (3) Meet the work search requirements of subsection (b) of this section.

17 (b) Work Search Requirements. – The Division must find that the individual meets all of  
18 the following work search requirements:

19 (1) The individual is able to work.

20 (2) The individual is available to work.

21 (3) The individual is actively seeking work.

22 (4) The individual accepts suitable work when offered.

23 ...

24 (l) Federal Disaster Declaration. – An individual who is unemployed due directly to a  
25 disaster covered by a federal disaster declaration has satisfied the work search requirements for  
26 any given week in the benefit period unless the Division requires the individual to conduct a work  
27 search."

28 **SECTION 1.(e)** This section becomes effective October 1, 2016.

## 30 PART II. PAID TIME OFF EXCLUDED FROM SEVERANCE PAY

31 **SECTION 2.(a)** G.S. 96-15.01(c) reads as rewritten:

32 "(c) Separation Payments. – An individual is not unemployed if, with respect to the entire  
33 calendar week, the individual receives or will receive as a result of the individual's separation from  
34 work remuneration ~~in one or more of the forms listed in this subsection, in any form. Amounts~~  
35 paid to an individual for paid time off that was available, but unused, before the individual's  
36 separation under a written policy in effect before the individual's separation are not remuneration  
37 as a result of separation. If the remuneration is given in a lump sum, the amount must be allocated  
38 on a weekly basis as if it had been earned by the individual during a week of employment. An  
39 individual may be unemployed, as provided in subsection (b) of this section, if the individual is  
40 receiving payment applicable to less than the entire ~~week-week.~~

41 (1) ~~Wages in lieu of notice.~~

42 (2) ~~Accrued vacation pay.~~

43 (3) ~~Terminal leave pay.~~

44 (4) ~~Severance pay.~~

45 (5) ~~Separation pay.~~

46 (6) ~~Dismissal payments or wages by whatever name."~~

47 **SECTION 2.(b)** This section becomes effective July 1, 2017, and applies to claims for  
48 benefits filed on or after that date.

## 50 PART III. MISCELLANEOUS CHANGES

51 **SECTION 3.(a)** G.S. 96-9.7(b) reads as rewritten:

1 **"§ 96-9.7. Surtax for the Unemployment Insurance Reserve Fund.**

2 (a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a  
3 contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the  
4 contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and  
5 administered in the same manner as contributions. Surtaxes collected under this section must be  
6 credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.2. Interest and  
7 penalties collected on unpaid surtaxes imposed by this section must be credited to the  
8 Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes  
9 imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in  
10 G.S. 115C-457.1.

11 (b) Suspension of Tax. – The tax does not apply in a calendar year if, as of ~~the preceding~~  
12 ~~August 1 computation date, September 1 of the preceding calendar year,~~ the amount in the State's  
13 account in the Unemployment Trust Fund equals or exceeds one billion dollars (\$1,000,000,000)."

14 **SECTION 3.(b)** G.S. 96-15(b)(2) reads as rewritten:

15 "(2) Adjudication. – When a protest is made by the claimant to the initial or  
16 monetary determination, or a question or issue is raised or presented as to the  
17 eligibility of a claimant, or whether any disqualification should be imposed, or  
18 benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred  
19 to an adjudicator. The adjudicator may consider any matter, document or  
20 statement deemed to be pertinent to the issues, including telephone  
21 conversations, and after such consideration shall render a conclusion as to the  
22 claimant's benefit entitlements. The adjudicator shall notify the claimant and all  
23 other interested parties of the conclusion reached. The conclusion of the  
24 adjudicator shall be deemed the final decision of the Division unless within 30  
25 days after the date of notification or mailing of the conclusion, whichever is  
26 earlier, a written appeal is filed pursuant to rules adopted by the Division. The  
27 Division shall be deemed an interested party for such purposes and may remove  
28 to itself or transfer to an appeals referee the proceedings involving any claim  
29 pending before an adjudicator.

30 Provided, any interested employer shall be allowed ~~14 days~~ 10 days from  
31 the mailing or delivery of the notice of the filing of a claim against the  
32 employer's account, whichever first occurs, to file with the Division its protest  
33 of the claim in order to have the claim referred to an adjudicator for a decision  
34 on the question or issue raised. Any protest filed must contain a basis for the  
35 protest and supporting statement of facts, and the protest may not be amended  
36 after the ~~14-day~~ 10-day period from the mailing or delivery of the notice of  
37 filing of a claim has expired. No payment of benefits shall be made by the  
38 Division to a claimant until one of the following occurs:

- 39 a. The employer has filed a timely protest to the claim.  
40 b. The ~~14-day~~ 10-day period for the filing of a protest by the employer has  
41 expired.  
42 c. A determination under this subdivision has been made.

43 Provided further, no question or issue may be raised or presented by the  
44 Division as to the eligibility of a claimant, or whether any disqualification  
45 should be imposed, after 45 days from the first day of the first week after the  
46 question or issue occurs with respect to which week an individual filed a claim  
47 for benefits. None of the provisions of this subsection shall have the force and  
48 effect nor shall the same be construed or interested as repealing any other  
49 provisions of G.S. 96-18.

50 An employer shall receive written notice of the employer's appeal rights and  
51 any forms that are required to allow the employer to protest the claim. The

1 forms shall include a section referencing the appropriate rules pertaining to  
2 appeals and the instructions on how to appeal."

3 **SECTION 3.(c)** This section becomes effective July 1, 2017, applies to claims for  
4 benefits filed on or after that date, and applies to tax calculations on or after that date.  
5

#### 6 **PART IV. FEDERAL CONFORMING CHANGES**

7 **SECTION 4.(a)** G.S. 96-11.7 reads as rewritten:

8 "**§ 96-11.7. ~~Acquisition of employer and transfer~~ Transfer of account to another employer.**

9 (a) ~~Mandatory Transfer.—Acquisition of a Business. —~~ When an employer acquires all of  
10 the ~~organization, trade, or business~~ of another employer, the account of the predecessor must be  
11 transferred as of the date of the acquisition to the successor ~~employer~~ for use in the determination  
12 of the successor's contribution rate. This ~~mandatory transfer subsection~~ does not apply when there  
13 is no common ownership between the predecessor and the successor and the successor acquired  
14 the assets of the predecessor in a sale in bankruptcy. ~~In this circumstance, the successor's~~  
15 ~~contribution rate is determined without regard to the predecessor's contribution rate.~~

16 (b) ~~Consent.—Acquisition of Portion of a Business. —~~ When a distinct and severable  
17 portion of an employer's ~~organization, trade, or business~~ is transferred to a successor employer and  
18 the successor employer continues to operate the acquired ~~organization, trade, or business~~, the  
19 portion of the account ~~of the transferring employer that related attributable~~ to the transferred  
20 business may, with the approval of the Division, be transferred by mutual consent ~~from the~~  
21 ~~transferring employer to the successor employer.~~ employer as of the date of the transfer. A  
22 successor employer that is a related entity of the transferring employer is eligible for a transfer  
23 from the transferring employer's account only to the extent permitted by rules adopted by the  
24 Division. No transfer may be made to the account of an employer that has ceased to be an  
25 employer under G.S. 96-11.9.

26 If a transfer of part or all of an account is allowed ~~but is not mandatory,~~ under this subsection,  
27 the successor employer requesting the transfer may make a request for transfer by filing an  
28 application for transfer with the Division within two years after the date the business was  
29 ~~transferred or the date of notification by the Division of the right to request an account transfer,~~  
30 ~~whichever is later. If the application is approved and the application was filed within 60 days after~~  
31 ~~notification from the Division of the right to request a transfer, the transfer is effective as of the~~  
32 ~~date the business was transferred. If the application is approved and the application was filed later~~  
33 ~~than 60 days after notification from the Division, the effective date of the transfer is the first day~~  
34 ~~of the calendar quarter in which the application was filed.~~ transferred.

35 If the effective date of a transfer of an account under this subsection is after the computation  
36 date in a calendar year, the Division must recalculate the contribution rate for the transferring  
37 employer and the successor employer based on their account balances on the effective date of the  
38 account transfer. The recalculated contribution rate applies for the calendar year beginning after  
39 the computation date.

40 (c) ~~Continuity of Control.—Any new employer that has continuity of control with an~~  
41 ~~existing business enterprise shall continue to be the same employer as the existing business~~  
42 ~~enterprise for the purposes of this Chapter as before the existence of the new employer. The~~  
43 ~~Division shall assign any new employer with continuity of control to the account of the existing~~  
44 ~~business enterprise. Any new employer with continuity of control shall not request or maintain an~~  
45 ~~account with the Division other than the account of the existing business enterprise. If a new~~  
46 ~~employer receives a new account and the Division subsequently finds that such new employer has~~  
47 ~~continuity of control with an existing business enterprise, the Division shall recalculate the annual~~  
48 ~~tax rates based on the combined annual account balances of the new employer and the existing~~  
49 ~~business enterprise.~~ Acquisition by Related Party. — If an employer transfers its business, or a  
50 portion thereof, to another person and, at the time of the transfer, there is substantially common  
51 ownership, management, or control of the predecessor employer and the transferee, then the

1 portion of the account attributable to the transferred business must be transferred to the transferee  
2 as of the date of the transfer.

3 ~~Continuity of control~~ Substantially common ownership, management, or control exists if one  
4 or more persons, entities, or other organizations owning, managing, or controlling the business  
5 enterprise remain in ownership, management, or control of the new employer-transferee. Control  
6 may occur by means of ownership of the organization conducting the business enterprise,  
7 business, ownership of assets necessary to conduct the business enterprise, business, security  
8 arrangements or lease arrangements covering assets necessary to conduct the business enterprise,  
9 business, or a contract when the ownership, stated arrangements, or contract provide for or allow  
10 direction of the internal affairs or conduct of the business enterprise. business. Control is not  
11 affected by changes in the form of a business enterprise, business, reorganization of a business  
12 enterprise, business, or expansion of a business enterprise. business.

13 (c1) Acquisition to Obtain Lower Contribution Rate. – The account of the predecessor  
14 employer will not be transferred if the Division finds that a person acquired the business solely or  
15 primarily for the purpose of obtaining a lower contribution rate.

16 (d) Contribution Rate. – Notwithstanding the other provisions in this section, when an  
17 account is transferred in its entirety to a successor employer, the transferring employer's  
18 contribution rate is the standard beginning rate. If the effective date of a transfer of an account  
19 under this section is after the computation date in a calendar year, the Division must recalculate  
20 the contribution rate for the transferring employer and the transferee based on their account  
21 balances on the effective date of the account transfer.

22 ~~Notwithstanding the other provisions in this section, if a successor employer to whom an~~  
23 ~~account is transferred was an employer as of the date of the business transfer, the account transfer~~  
24 ~~does not affect the successor employer's contribution rate for the calendar year in which the~~  
25 ~~business was transferred. If the successor employer was not an employer as of the date of the~~  
26 ~~business transfer, the successor employer's contribution rate for the year in which the business~~  
27 ~~transfer occurs is the standard beginning rate unless one of the following applies:~~

28 ~~(1) The account transfer is a mandatory transfer, in which case the contribution rate~~  
29 ~~of the successor employer is the contribution rate of the transferring employer.~~

30 ~~(2) The account transfer is by consent and the successor employer filed an~~  
31 ~~application within 60 days of the business transfer, in which case the~~  
32 ~~contribution rate of the successor employer is the contribution rate of the~~  
33 ~~transferring employer. If the business was transferred from more than one~~  
34 ~~employer and the transferring employers had different contribution rates, the~~  
35 ~~contribution rate of the successor employer is the rate calculated as of the~~  
36 ~~effective date of the account transfers.~~

37 (e) Liability for Contributions. – An employer that, by operation of law, purchase, or  
38 otherwise is the successor to an employer liable for contributions becomes liable for contributions  
39 on the day of the succession. This ~~provision subsection~~ does not affect the successor's liability as  
40 otherwise prescribed by law for unpaid contributions due from the predecessor.

41 (f) Deceased or Insolvent Employer. – When the organization, trade, or business of a  
42 deceased person or of an insolvent debtor is taken over and operated by an administrator, executor,  
43 receiver, or trustee in bankruptcy, the new employer automatically succeeds to the account and  
44 contribution rate of the deceased person or insolvent debtor without the necessity of filing an  
45 application for the transfer of the account.

46 (g) Continuation of Existing Account. – Any transferee with substantially common  
47 ownership, management, or control of an existing business must not request or maintain an  
48 account with the Division other than the account of the existing business. If a transferee receives a  
49 new account and the Division subsequently finds that such new employer has substantially  
50 common ownership, management, or control with an existing business, the Division must

1 recalculate the annual tax rates based on the combined annual account balances of the new  
2 employer and the existing business."

3           **SECTION 4.(b)** This section becomes effective July 1, 2017.

4

5 **PART V. EFFECTIVE DATE**

6           **SECTION 5.** Except as otherwise provided, this act is effective when it becomes law.