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HOUSE BILL NO. 1278

Offered January 14, 2015

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A BILL to amend and reenact §§ 60.2-528, 60.2-614, 60.2-618, and 60.2-619 of the Code of Virginia, relating to unemployment compensation; employer responsibility for benefit charges.

Patron—Davis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-528, 60.2-614, 60.2-618, and 60.2-619 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-528. Individual benefit charges.

A. An individual's "benefit charges" shall be computed in the following manner:

1. For each week benefits are received, a claimant's "benefit charges" shall be equal to his benefits received for such week.

2. For each week extended benefits are received, pursuant to § 60.2-610 or 60.2-611, a claimant's "benefit charges" shall be equal to one-half his benefits received for such week. However, a claimant's "benefit charges" for extended benefits attributable to service in the employ of a governmental entity referred to in subdivisions 1 through 3 of subsection A of § 60.2-213 shall be equal to the full amount of such extended benefit.

3. For each week partial benefits are received, the claimant's "benefit charges" shall be computed (i) in the case of regular benefits as in subdivision 1 of this subsection, or (ii) in the case of extended benefits as in subdivision 2 of this subsection.

B. 1. The employing unit from whom such individual was separated, resulting in the current period of unemployment, shall be the most recent employing unit for whom such individual has performed services for remuneration (i) during ~~30~~ 60 days, whether or not such days are consecutive, or (ii) during ~~240~~ 480 hours. If such individual's unemployment is caused by separation from an employer, such individual's "benefit charges" for such period of unemployment shall be deemed the responsibility of the last employer for (i) ~~30~~ 60 days or (ii) ~~240~~ 480 hours prior to such period of unemployment.

2. Any employer charged with benefits paid shall be notified of the charges quarterly by the Commission. The amount specified shall be conclusive on the employer unless, not later than 30 days after the notice of benefit charges was mailed to its last known address or otherwise delivered to it, the employer files an appeal with the Commission, setting forth the grounds for such an appeal. Proceedings on appeal to the Commission regarding the amount of benefit charges under this subsection or a redetermination of such amount shall be in accordance with the provisions of § 60.2-500. The decision of the Commission shall be subject to the provisions of § 60.2-500. Any appeal perfected pursuant to the provisions of this section shall not address any issue involving the merits or conditions of a claimant's separation from employment.

C. No "benefit charges" shall be deemed the responsibility of an employer of:

1. An individual whose separation from the work of such employer arose as a result of a violation of the law by such individual, which violation led to confinement in any jail or prison;

2. An individual who voluntarily left employment in order to accept other employment, genuinely believing such employment to be permanent;

3. An individual with respect to any weeks in which benefits are claimed and received after such date as that individual refused to accept an offer of rehire by the employer because such individual was in training with approval of the Commission pursuant to § 60.2-613;

4. An individual who voluntarily left employment to enter training approved under § 236 of the Trade Act of 1974 (19 U.S.C. § 2296 et seq.);

5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty in connection with an international conflict and whose employment is terminated concurrent with and because of that member's return from active duty;

6. An individual who left employment voluntarily with good cause due to a personal bona fide medical reason caused by a non-job-related injury or medical condition;

7. An individual participating as an inmate in (i) state or local work release programs pursuant to § 53.1-60 or 53.1-131; (ii) community residential programs pursuant to §§ 53.1-177, 53.1-178, and 53.1-179; or (iii) any similar work release program, whose separation from work arose from conditions of release or parole from such program;

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59 8. An individual who was unable to work at his regular employment due to a disaster for which the
60 Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of
61 the employer's business. In no case shall more than four weeks of benefit charges be waived; or

62 9. (Expires December 31, 2020) An individual who leaves employment to accompany his spouse to
63 the location of the spouse's new duty assignment if (i) the spouse is on active duty in the military or
64 naval services of the United States; (ii) the spouse's relocation to a new military-related assignment is
65 pursuant to a permanent change of station order; (iii) the location of the spouse's new duty assignment is
66 not readily accessible from the individual's place of employment; and (iv) the spouse's new duty
67 assignment is located in a state that, pursuant to statute, does not deem a person accompanying a
68 military spouse as a person leaving work voluntarily without good cause.

69 **§ 60.2-614. Service required during immediately preceding benefit year in which individual**
70 **received benefits.**

71 No individual may receive benefits in a benefit year unless, subsequent to the beginning of the
72 immediately preceding benefit year during which he received benefits, he performed service for an
73 employer as defined in § 60.2-210 for remuneration (i) during ~~thirty~~ 60 days, whether or not such days
74 were consecutive, or (ii) for ~~240~~ 480 hours, and subsequently became totally or partially separated from
75 such employment.

76 **§ 60.2-618. Disqualification for benefits.**

77 An individual shall be disqualified for benefits upon separation from the last employing unit for
78 whom he has worked ~~30~~ 60 days or ~~240~~ 480 hours or from any subsequent employing unit:

79 1. (Effective until January 1, 2021) For any week benefits are claimed until he has performed
80 services for an employer (i) during ~~30~~ 60 days, whether or not such days are consecutive, or (ii) for ~~240~~
81 480 hours, and subsequently becomes totally or partially separated from such employment, if the
82 Commission finds such individual is unemployed because he left work voluntarily without good cause.

83 If (a) at the time of commencing employment with such employing unit an individual is enrolled in
84 an accredited academic program of study provided by an institution of higher education for students that
85 have been awarded a baccalaureate degree, which academic program culminates in the awarding of a
86 master's, doctoral, or professional degree; (b) the individual's employment with such employing unit
87 commenced and ended during the period between spring and fall semesters of the academic program in
88 which the individual is enrolled; and (c) the individual returned to such academic program following his
89 separation from such employing unit, there shall be a rebuttable presumption that the individual left
90 work voluntarily.

91 As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an
92 employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to
93 join his or her spouse in a new locality, except where an individual leaves employment to accompany a
94 spouse to the location of the spouse's new duty assignment if (A) the spouse is on active duty in the
95 military or naval services of the United States; (B) the spouse's relocation to a new military-related
96 assignment is pursuant to a permanent change of station order; (C) the location of the spouse's new duty
97 assignment is not readily accessible from the individual's place of employment; and (D) except for
98 members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the
99 spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person
100 accompanying a military spouse as a person leaving work voluntarily without good cause. An individual
101 shall not be deemed to have voluntarily left work solely because the separation was in accordance with
102 a seniority-based policy.

103 1. (Effective January 1, 2021) For any week benefits are claimed until he has performed services for
104 an employer (i) during ~~30~~ 60 days, whether or not such days are consecutive, or (ii) for ~~240~~ 480 hours,
105 and subsequently becomes totally or partially separated from such employment, if the Commission finds
106 such individual is unemployed because he left work voluntarily without good cause.

107 If (a) at the time of commencing employment with such employing unit an individual is enrolled in
108 an accredited academic program of study provided by an institution of higher education for students that
109 have been awarded a baccalaureate degree, which academic program culminates in the awarding of a
110 master's, doctoral, or professional degree; (b) the individual's employment with such employing unit
111 commenced and ended during the period between spring and fall semesters of the academic program in
112 which the individual is enrolled; and (c) the individual returned to such academic program following his
113 separation from such employing unit, there shall be a rebuttable presumption that the individual left
114 work voluntarily.

115 As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an
116 employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to
117 join his or her spouse in a new locality. An individual shall not be deemed to have voluntarily left work
118 solely because the separation was in accordance with a seniority-based policy.

119 2. a. For any week benefits are claimed until he has performed services for an employer (i) during
120 ~~30~~ 60 days, whether or not such days are consecutive, or (ii) for ~~240~~ 480 hours, and subsequently

becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(5) An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which such failure occurred, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 60 days, whether or not such days are consecutive, or (ii) for 240 480 hours, and subsequently becomes totally or partially separated from such employment.

b. In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.

c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

(2) 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

(3) 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. No individual shall be qualified for benefits during any week that such individual, in connection with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The disqualification shall commence with the week in which such a test was conducted, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 60 days, whether or not such days are consecutive, or (ii) for 240 480 hours, and subsequently becomes totally or partially separated from such employment.

4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds that such individual, within 36 calendar months immediately preceding such determination or decision,

182 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose
183 a material fact, to obtain or increase any benefit or payment under this title, the unemployment
184 compensation of any other state, or any other program of the federal government which is administered
185 in any way under this title, either for himself or any other person. Overpayments that have been
186 fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall be
187 recoverable as provided in § 60.2-633.

188 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his
189 release from prison or jail until he has performed services for an employer for (i) ~~30~~ 60 days, whether
190 or not such days are consecutive, or (ii) ~~240~~ 480 hours, and subsequently becomes totally or partially
191 separated from such employment.

192 6. If such separation arose as a condition of the individual's parole or release from a custodial or
193 penal institution and such individual was participating in the Diversion Center Incarceration Program
194 pursuant to § 19.2-316.3.

195 **§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.**

196 A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim.
197 On the basis of the facts found by him, the deputy shall either:

198 a. Determine whether or not such claim is valid, and if valid, the week with respect to which
199 benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

200 b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission,
201 which tribunal or Commission shall make its determination in accordance with the procedure described
202 in § 60.2-620.

203 2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of
204 § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to
205 any appeal tribunal, which shall make its determination in accordance with the procedure described in
206 § 60.2-620.

207 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice
208 of such filing to be mailed to the most recent ~~30-day~~ 60-day or ~~240-hour~~ 480-hour employing unit of
209 the claimant and all subsequent employing units, and any reimbursable employing units which may be
210 liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such
211 notice shall not have any effect upon the claim for benefits.

212 C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by
213 mailing such notice to the claimant's last known address. In addition, notice of any determination which
214 involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be
215 promptly given in the same manner to the most recent ~~30-day~~ 30-day or ~~240-hour~~ 480-hour employing
216 unit by whom the claimant was last employed and any subsequent employing unit which is a party. The
217 Commission may dispense with the giving of notice of any determination to any employing unit, and
218 such employing unit shall not be entitled to such notice if it has failed to respond timely or adequately
219 to a written request of the Commission for information, as required by § 60.2-528.1, from which the
220 deputy may have determined that the claimant may be ineligible or disqualified under any provision of
221 this title. The deputy shall promptly notify the claimant of any decision made by him at any time which
222 in any manner denies benefits to the claimant for one or more weeks.

223 D. Such determination or decision shall be final unless the claimant or any such employing unit files
224 an appeal from such determination or decision (i) within 30 calendar days after the delivery of such
225 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or
226 (iii) within 30 days after such notification was mailed to the last known address of an interstate
227 claimant. For good cause shown, the 30-day period may be extended.

228 E. Benefits shall be paid promptly in accordance with a determination or redetermination under this
229 chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court
230 under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision,
231 regardless of the pendency of the period to file an appeal or petition for judicial review that is provided
232 in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until
233 such determination, redetermination or decision has been modified or reversed by a subsequent
234 redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment
235 thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of
236 an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall
237 continue to be paid until such time as a court decision has become final so that no further appeal can be
238 taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge
239 to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result
240 of an appeal, the courts finally determine that the Commission should have awarded benefits to the
241 claimant or claimants involved in such appeal.