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HOUSE BILL NO. 1382

Offered January 14, 2015

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A BILL to amend and reenact §§ 60.2-528, 60.2-532, and 60.2-619 of the Code of Virginia, relating to unemployment compensation; liability of last 30-day employer for benefit charges; pool costs.

Patron—Head

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-528, 60.2-532, 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 days, whether or not such days are consecutive, or (ii) during 240 hours ("last 30-day employing unit"). If such individual's unemployment is caused by separation from an employer who employed the individual after the individual separated from employment with the last 30-day employing unit, such individual's "benefit charges" for such period of unemployment shall (a) not be deemed the responsibility of the last employer for (i) 30 days or (ii) 240 hours prior to such period of unemployment 30-day employing unit and (b) be pool costs as provided in subdivision B 2 of § 60.2-532.

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

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59 § 53.1-60 or 53.1-131; (ii) community residential programs pursuant to §§ 53.1-177, 53.1-178, and
60 53.1-179; or (iii) any similar work release program, whose separation from work arose from conditions
61 of release or parole from such program;

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

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

72 **§ 60.2-532. Pool cost charges.**

73 A. As of January 1 of each year, to all experience rating tax rates established pursuant to § 60.2-531,
74 to all assigned tax rates established pursuant to §§ 60.2-515, 60.2-526, 60.2-527 and 60.2-538, there
75 shall be added the pool cost charges as determined in subsection B of this section.

76 B. The pool cost charge rate rounded to the nearest one-hundredth of a percent shall be determined
77 as follows:

78 1. Pool costs for a given calendar year shall be those costs defined in subdivision 2 of this
79 subsection for the ~~thirty-six~~ 36 consecutive calendar month period ending on June 30 immediately
80 preceding that calendar year. The pool cost charge rate shall be pool costs divided by payrolls for such
81 period.

82 2. Pool costs shall consist of (i) benefit charges ~~which~~ *that* (a) cannot be assigned to an individual
83 employer pursuant to §§ § 60.2-210, §§ 60.2-212 through 60.2-219, or subsection C of § 60.2-528; ~~or~~;
84 (b) cannot be charged to an individual employer due to his becoming an inactive account pursuant to
85 § 60.2-210 or § 60.2-509; *or (c) are not the responsibility of the last 30-day employing unit pursuant to*
86 *subdivision B 1 of § 60.2-528;* (ii) the difference in the amount the Commission pays pursuant to
87 subdivision A 2 of ~~subsection A~~ of § 60.2-609 and the amount the Commission receives pursuant to
88 subdivision A 3 of ~~subsection A~~ of § 60.2-609; and (iii) the difference between the benefit charges of
89 all employers with a maximum experience rating tax rate and the amount of the taxes resulting from
90 applying the maximum experience rating tax rate against the payrolls of the same employers. The term
91 "payrolls" as used in this section ~~shall mean~~ *means* the taxable payroll on which taxes have been paid
92 on or before September 30 immediately following such June 30.

93 3. When the fund balance factor for the most recent twelve-month period ending on June 30 of the
94 immediately preceding calendar year is greater than ~~fifty~~ 50 percent, interest earned on the balance
95 which shall stand to the credit of the account of the Commonwealth of Virginia in the Unemployment
96 Trust Fund in the treasury of the United States shall be subtracted from pool costs, except that in no
97 instance shall pool costs be less than zero.

98 **§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.**

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

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

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

106 2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of
107 § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to
108 any appeal tribunal, which shall make its determination in accordance with the procedure described in
109 § 60.2-620.

110 B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice
111 of such filing to be mailed to the ~~most recent 30-day or 240-hour~~ employing unit of the claimant ~~and all~~
112 ~~subsequent employing units, from which the claimant was last employed~~ and any reimbursable
113 employing units ~~which~~ *that* may be liable for reimbursement to the Commission for any benefits paid.
114 However, the failure to furnish such notice shall not have any effect upon the claim for benefits.

115 C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by
116 mailing such notice to the claimant's last known address. In addition, notice of any determination which
117 involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be
118 promptly given in the same manner to the ~~most recent 30-day or 240-hour~~ employing unit by whom the
119 claimant was last employed ~~and any subsequent employing unit which is a party~~. The Commission may
120 dispense with the giving of notice of any determination to any employing unit, and such employing unit

shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

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

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