

18104438D

HOUSE BILL NO. 1391

Offered January 15, 2018

A *BILL to amend and reenact § 60.2-229 of the Code of Virginia, relating to unemployment compensation benefits; wages; overtime payments excluded.*

Patron—Head

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 60.2-229 of the Code of Virginia is amended and reenacted as follows:****§ 60.2-229. Wages.**

A. "Wages" means all remuneration paid, or which should have been paid, for personal services, including commissions, bonuses, tips, back pay, dismissal pay, severance pay and any other payments made by an employer to an employee during his employment and thereafter and the cash value of all remuneration payable in any medium other than cash. Notwithstanding the other provisions of this subsection, wages paid in back pay awards shall be allocated to, and reported as being paid during, the calendar quarter or quarters in which such back pay would have been earned. Severance pay paid at the time of, or subsequent to, separation from employment shall be allocated to the last day of work unless otherwise allocated by the employer. If otherwise allocated, severance pay shall be allocated at a rate not less than the average weekly wage of such employee during the last calendar quarter, and reported as such. Severance pay shall be deducted from any benefits payable after the Commission's receipt of notification of severance pay by the employer pursuant to § 60.2-603. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Commission.

B. The term "wages" shall not include:

1. Subsequent to December 31, 1990, for purposes of taxes only, that part of the remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, that is greater than \$8,000 and is payable during any calendar year to an individual by any employer with respect to employment in this Commonwealth or any other state. If an employer, hereinafter referred to as "successor employer," during any calendar year acquires substantially all of the property used in a trade or business of another employer, hereinafter referred to as a "predecessor," or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, with respect to employment equal to \$8,000 is payable by the successor to such individual during such calendar year, any remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, with respect to employment payable, or considered under this subdivision as payable, to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as payable by such successor employer;

2. The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provisions for (i) his employees generally, (ii) for his employees generally and their dependents, (iii) for a class or classes of his employees, or (iv) for a class or classes of his employees and their dependents, on account of:

- a. Retirement;
- b. Sickness or accident disability payments which are received under a workers' compensation law;
- c. Medical or hospitalization expenses in connection with sickness or accident disability;
- d. Death; or
- e. Unemployment benefits under any private plan financed in whole or in part by an employer;

3. The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employer under § 3101 of the Federal Internal Revenue Code;

4. Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with the sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

5. Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business; or

INTRODUCED

HB1391

59 6. Any payment, other than vacation or sick pay, made to an employee after the month in which he
60 attains the age of ~~sixty-five~~ 65, if he did not work for the employer in the period for which such
61 payment is made; or

62 7. *Subsequent to December 31, 2018, only for purposes of computing the weekly benefit amount*
63 *based on an individual's earned wages for insured work pursuant to § 60.2-602, any part of the*
64 *individual's remuneration paid as overtime compensation required by 29 U.S.C. § 207.*