

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 202

An Act 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; responsibility for benefit charges.

[S 1182]

Approved March 9, 1997

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 thirty days, whether or not such days are consecutive, or (ii) during 240 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 ~~thirty-day~~ employer for (i) thirty days or (ii) 240 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 thirty 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 as a result of Operation Desert Shield or Operation Desert Storm and whose employment is terminated concurrent with and because of that member's return from active duty; or

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.

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

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

§ 60.2-618. Disqualification for benefits.

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked thirty days *or 240 hours* or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during thirty days, whether or not such days are consecutive, *or (ii) for 240 hours*, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause. As used in this chapter "good cause" shall not include (i) voluntarily leaving work with an employer to become self-employed, or (ii) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. For any week benefits are claimed until he has performed services for an employer (i) during thirty days, whether or not such days are consecutive, *or (ii) for 240 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.

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 thirty days, whether or not such days are consecutive, *or (ii) for 240 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 (i) required as a condition of employment and (ii) performed, and a sample is collected, in accordance with scientifically recognized standards by a laboratory accredited by the National Institute of Drug Abuse. 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 thirty days, whether or not such days are consecutive, *or (ii) for 240 hours*, and subsequently becomes totally or partially separated from such employment.

4. For fifty-two weeks, beginning with the date of the determination or decision, if the Commission finds that such individual, within thirty-six calendar months immediately preceding such determination or decision, has made a false statement or representation knowing it to be false, or has knowingly failed to disclose a material fact, to obtain or increase any benefit or payment under this title, the unemployment compensation of any other state, or any other program of the federal government which is administered in any way under this title, either for himself or any other person. Additionally, such individual shall be ineligible for benefits until he has repaid the Commission the sum which has been fraudulently obtained.

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

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

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

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

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

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

§ 60.2-620.

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

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination which involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent thirty-day *or 240-hour* employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may 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 indicate prior to the determination, as required by regulation promulgated by the Commission, 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 twenty-one calendar days after the delivery of such notification, (ii) within twenty-one calendar days after such notification was mailed to his last known address, or (iii) within twenty-one days after such notification was mailed to the last known address of an interstate claimant. For good cause shown the twenty-one-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.