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HOUSE BILL NO. 2559

Offered January 20, 1997

A BILL to amend and reenact §§ 60.2-533, 60.2-602 and 60.2-618 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 65.2-101.1, relating to the Employer and Employee Assistance Act of 1997.

Patrons—Cranwell, Almand, Cooper, DeBoer, Grayson, Melvin, Puller, Scott, Stump and Van Yahres

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-533, 60.2-602 and 60.2-618 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 65.2-101.1 as follows:

§ 60.2-533. Fund balance factor.

A. As of July 1 of each calendar year, a fund balance factor, rounded to the nearest one-tenth of a percent, shall be determined as follows:

The net assets which shall be compared with the "adequate balance" as determined in subsection B of this section, shall be comprised of the balance which shall stand to the credit of the account of the Commonwealth of Virginia in the Unemployment Trust Fund in the Treasury of the United States; amounts withdrawn therefrom but not expended; employer payments not yet transferred to such account; net employer taxes receivable; and amounts due from claimants and other states, minus payables due to claimants, employers, other funds of the Virginia Employment Commission, and other states. The resulting percent shall be termed the "fund balance factor," except that if the percent determined is less than fifty percent, the fund balance factor shall be fifty percent.

B. As of July 1 of each calendar year, the Commission shall determine the "adequate balance" for the trust fund as follows:

For the ~~twenty-five~~ twenty-year period ending July 1 of the year of determination, the highest ratios of benefits divided by total wages of three separate consecutive four-quarter periods shall be averaged and multiplied by ~~1.5~~ 1.33 to determine the fund adequacy multiplier. The fund adequacy multiplier shall be multiplied by the total wages for the year in question to determine the "adequate fund balance" for that year.

C. A fund building rate of two-tenths percent will be added to all experience rating rates established pursuant to § 60.2-531, to all assigned tax rates established pursuant to §§ 60.2-515, 60.2-526, 60.2-527 and 60.2-538 except that such rate shall not be applied if the fund balance factor determined pursuant to subsection B of this section exceeds fifty percent.

§ 60.2-602. Weekly benefit amount.

~~For A. Except as provided in subsection B, for claims filed on or after July 7, 1996~~ January 4, 1998, an eligible individual's weekly "benefit amount" shall be the amount appearing in Column B in the "Benefit Table" in this section on the line on which in Column A of such table, there appears the total wages for insured work paid to such individual in the two quarters of his base period in which such total wages were highest.

B. On and after January 4, 1998, the maximum weekly benefit amount shall be an amount equal to forty-five percent of the average weekly wage of the Commonwealth, rounded up to the nearest dollar. Corresponding changes shall be made in the Benefit Table to reflect any adjustment to the maximum amount. As used in this subsection, "average weekly wage of the Commonwealth" means such wage calculated for the most recent twelve-month period ending on March 31 of the year immediately preceding the calendar year for which a benefit amount is being determined.

C. For claims filed prior to ~~July 7, 1996~~ January 4, 1998, an eligible individual's weekly "benefit amount" shall be computed under the provisions of this section in force on the date such claim was filed.

[Benefit Table Omitted]

§ 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 from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive, 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~~

INTRODUCED

HB2559

60 employer to accompany or to join his or her spouse in a new locality. An individual shall not be
61 deemed to have voluntarily left work solely because the separation was in accordance with a
62 seniority-based policy.

63 2. For any week benefits are claimed until he has performed services for an employer during thirty
64 days, whether or not such days are consecutive, and subsequently becomes totally or partially separated
65 from such employment, if the Commission finds such individual is unemployed because he has been
66 discharged for misconduct connected with his work.

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

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

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

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

80 (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the
81 individual than those prevailing for similar work in the locality; or

82 (3) If as a condition of being employed the individual would be required to join a company union or
83 to resign from or refrain from joining any bona fide labor organization.

84 d. No individual shall be qualified for benefits during any week that such individual, in connection
85 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
86 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is (i) required as a
87 condition of employment and (ii) performed, and a sample is collected, in accordance with scientifically
88 recognized standards by a laboratory accredited by the National Institute of Drug Abuse. The
89 disqualification shall commence with the week in which such a test was conducted, and shall continue
90 for the period of unemployment next ensuing until he has performed services for an employer during
91 thirty days, whether or not such days are consecutive, and subsequently becomes totally or partially
92 separated from such employment.

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

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

105 § 65.2-101.1. *Injuries caused by cumulative trauma or repetitive motion.*

106 A. Any physical injury that arises out of and in the course of employment and that results from
107 cumulative trauma or repetitive motion shall be treated as an injury by accident for purposes of this
108 Act. The right to compensation for injuries resulting from cumulative trauma or repetitive motion shall
109 be forever barred, unless a claim is filed with the Commission within two years from the first
110 communication to the employee by a physician that he suffers from an injury caused by cumulative
111 trauma or repetitive motion.

112 B. Any employee who suffers from a physical injury caused by cumulative trauma or repetitive
113 motion shall be entitled to the same hospital, medical and miscellaneous benefits as an employee who
114 has a compensable injury by accident, except that the period during which the employer shall be
115 required to furnish medical attention, including reasonably necessary diagnostic services, shall begin
116 fifteen days prior to the first communication of the diagnosis to the employee.

117 C. When an employee suffers from an injury caused by repetitive motion or cumulative trauma that
118 is covered by this Act, the employer who shall be liable to pay compensation shall be determined as
119 follows:

120 1. If the employee is employed in an occupation that exposes him to the hazard of repetitive motion
121 or cumulative trauma at the time he receives a communication of a diagnosis, that employer shall alone

122 *be liable to pay benefits as provided in this Act.*

123 *2. If the employee is employed in an occupation that does not expose him to the hazard of repetitive*
124 *motion or cumulative trauma at the time he receives a communication of a diagnosis, the employer to*
125 *last expose the employee to the hazard of repetitive motion or cumulative trauma shall alone be liable*
126 *to pay benefits as provided in this Act.*

127 *D. If the employer against whom a claim for benefits has been brought asserts as a defense that*
128 *some other employer is liable to pay benefits as provided herein, the employer shall notify the*
129 *Commission and the employee in writing of this defense at least twenty days prior to any hearing on the*
130 *issue of compensability.*

131 **2. That notwithstanding the provisions of § 60.2-526, changes in employer unemployment**
132 **compensation tax rates resulting from fund adequacy multiplier and adequate fund balance**
133 **recalculations made pursuant to this act shall become effective on July 1, 1997. The Virginia**
134 **Employment Commission shall immediately notify employers of their recomputed tax rates for**
135 **wages paid during the final two quarters of 1997.**