

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 79

An Act to amend and reenact §§ 60.2-513, 60.2-536, 60.2-619 and 60.2-620 of the Code of Virginia, relating to unemployment compensation; appeal of Virginia Employment Commission decisions.

[H 2299]

Approved March 10, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-513, 60.2-536, 60.2-619 and 60.2-620 of the Code of Virginia are amended and reenacted as follows:

§ 60.2-513. Failure of employing unit to file reports; assessment and amount of penalty.

A. If any employing unit fails to file with the Commission any report which the Commission deems necessary for the effective administration of this title within thirty days after the Commission requires the same by written notice mailed to the last known address of such employing unit, the Commission may determine on the basis of such information as it may have whether such employing unit is an employer, unless such determination has already been made. Also, on the basis of such information, the Commission may assess the amount of tax due from such employer and shall give written notice of such determination and assessment to such employer. Such determination and assessment shall be final (i) unless such employer, within ~~twenty~~ thirty days after the mailing to the employer at his last known address or other service of the notice of such determination or assessment, applies to the Commission for a review of such determination and assessment or (ii) unless the Commission, on its own motion, sets aside, reduces or increases the same.

B. If any employer had wages payable for a calendar quarter and fails to file any report as required of him under this title with respect to wages or taxes, the Commission shall assess upon the employer a penalty of thirty dollars, which shall be in addition to the taxes due and payable with respect to such report. A newly covered employer may file by the due date of the quarter in which his account number is assigned by the Commission, without penalty. If such employer's report is not filed by that date, a thirty dollar penalty shall be assessed for each report. Penalties collected pursuant to this section shall be paid into the Special Unemployment Compensation Administration Fund.

§ 60.2-536. Review of decision under § 60.2-535.

A. Any person aggrieved by a decision of the Commission under the provisions of § 60.2-535 shall have the right to review before the Commission. Such review before the Commission shall be instituted by a request filed by the aggrieved party with the Commission within ~~ten~~ thirty days from the date of ~~making~~ mailing of the decision.

B. Any party aggrieved by the Commission decision on review may secure judicial review of any decision pursuant to the provisions of § 60.2-500, such provisions applying mutatis mutandis.

§ 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 provisions of subdivision 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision 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 inforatory 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~~ *thirty* calendar days after the delivery of such notification, (ii) within ~~twenty-one~~ *thirty* calendar days after such notification was mailed to his last known address, or (iii) within ~~twenty-one~~ *thirty* days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the ~~twenty-one~~ *thirty*-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.

§ 60.2-620. Hearing and decision on appeal.

A. Appeals filed under § 60.2-619 shall be heard by an appeal tribunal appointed pursuant to § 60.2-621. Such appeal tribunal, after affording the claimant and any other parties reasonable opportunity for a fair hearing, shall have jurisdiction to consider all issues with respect to the claim since the initial filing thereof. Such tribunal shall affirm, set aside, reverse, modify, or alter the findings of fact and decision of the deputy, and may enter such order or decision with respect to the claim as such appeal tribunal finds should have been entered. However, no such order or decision shall affect benefits already paid except in accordance with the provisions of § 60.2-633.

B. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ~~twenty-one~~ *thirty* days after the date of notification or mailing of such decision, further appeal is initiated pursuant to § 60.2-622. However, for good cause shown the ~~twenty-one~~ *thirty*-day period may be extended.