GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2021-5
SENATE BILL 114

AN ACT TO PROVIDE 2021 COVID-19 RELIEF MEASURES FOR EMPLOYERS AND CLAIMANTS UNDER THE UNEMPLOYMENT INSURANCE SYSTEM, TO REDUCE THE SUTA TAX RATE FOR 2021, AND TO MAKE TECHNICAL AND CLARIFYING CHANGES REQUESTED BY THE DIVISION OF EMPLOYMENT SECURITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2C of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 96-14.16. Emergency unemployment benefits and tax rate reduction to respond to the coronavirus emergency of 2021.**

(a) Extended Benefit Period. – With respect to determining whether the State is in an extended benefits period beginning November 1, 2020, through December 31, 2021, the State shall disregard the requirement in G.S. 96-14.14(b)(3) that no extended period may begin before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(b) Deferral of Regular Unemployment Compensation Payment. – The purpose of this subsection is to elect the option by which the State will coordinate the PEUC and regular unemployment compensation programs for individuals who meet the four criteria to be paid PEUC, as required by the Unemployment Insurance Program Letter 17-20, Change 2, issued by the U.S. Department of Labor on December 31, 2020. The State elects option one, which requires an individual whose benefit year has expired to file a regular unemployment initial claim in a new benefit year but defers payment of the new regular unemployment compensation claim until the individual's PEUC claim has been exhausted or the PEUC program has expired, whichever occurs first. For purposes of this subsection, "PEUC" means the Pandemic Emergency Unemployment Compensation program.

(c) Tax Rate Reduction. – For the calendar year 2021, the base contribution rate determined under G.S. 96-9.2(c) for an experience-rated employer will remain at one and nine-tenths percent (1.9%).

(d) Applicability. – This section applies for unemployment benefits filed for periods beginning on or after March 10, 2020, and expires for unemployment benefits filed for periods beginning on or after the earlier of the following: (i) the date the Governor signs an executive order rescinding Executive Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19, or (ii) December 31, 2021."

SECTION 2. G.S. 96-14.14(a) reads as rewritten:

"(a) ~~[General Provisions.]~~ General Provisions. – Extended benefits payable under sub-subdivision (b)(5)a. of this section shall be paid as required under the Federal-State Extended Unemployment Compensation Act of 1970. Extended benefits payable under ~~sub-subdivision (b)(5)a.~~ sub-subdivisions (b)(5)b. and (b)(5)c. of this section are not required under federal law and may be paid only if the federal government funds one hundred percent (100%) of the costs of providing them. Extended benefits are payable in the manner prescribed by this section."

SECTION 3. G.S. 96-14(b) reads as rewritten:

"(b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who is partially unemployed or part-totally employed is the amount the individual would receive under subsection (a) of this section if the individual were totally unemployed, reduced by the amount of any wages earned by the individual ~~receives~~ in the benefit week in excess of twenty percent (20%) of the benefit amount applicable to total unemployment. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit."

SECTION 4. G.S. 96-15(c) reads as rewritten:

"(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or hearing officer shall set a hearing in which the parties are given reasonable opportunity to be heard. The conduct of hearings shall be governed by suitable rules adopted by the Division. The rules need not conform to common law or statutory rules of evidence or technical or formal rules of procedure but shall provide for the conduct of hearings in such manner as to ascertain the substantial rights of the parties. The hearings may be conducted by conference telephone call or other similar means provided that if any party files with the Division prior written objection to the telephone procedure, that party will be afforded an opportunity for an in-person hearing at such place in the State as the Division by rule shall provide. The hearing shall be scheduled for a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary business activities of an employer and the return to employment of a claimant. The appeals referee or hearing officer may affirm or modify the conclusion of the adjudicator or issue a new decision in which findings of fact and conclusions of law will be set out or dismiss an appeal when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee shall be recorded and the decision of the appeals referee shall be deemed to be the final decision of the Division unless within 10 days after the date of notification or mailing of the decision, whichever is earlier a written appeal is filed pursuant to such rules as the Board of Review and the Division may adopt. No person may be appointed as an appeals referee or hearing officer unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible for designation by the Division as a hearing officer under G.S. 96-4(q). No appeals referee or hearing officer in full-time permanent status may engage in the private practice of law as defined in G.S. 84-2.1 while serving in office as appeals referee or hearing officer; violation of this prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the appeals referee or hearing ~~officer;~~ officer, the appealing party shall submit a clear written statement containing the grounds for the appeal within the time allowed by law for taking the appeal, and if such timely statement is not submitted, the Board of Review may dismiss the appeal."

SECTION 5. G.S. 96-15(f) reads as rewritten:

"(f) Procedure. – The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules adopted by the Division for determining the rights of the parties, whether or not such ~~regulations~~ rules conform to common-law or statutory rules of evidence and other technical rules of procedure.

All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded unless the recording is waived by all interested parties. If the testimony is recorded, it need not be transcribed unless the disputed claim is further appealed and, one or more of the parties objects, under such rules as the Division may adopt, to being provided a copy of the tape recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual receiving the transcript shall pay to the Division such reasonable fee for the transcript as the Division may by ~~regulation~~ rule provide. The fee so prescribed by the Division for a party shall

not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars ($65.00) per transcript. The Division may by regulation provide for the fee to be waived in such circumstances as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee.

The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or other employee assigned to make the decision believes the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision may accept the stipulation and render a decision based on the stipulation. If the appeals referee, hearing officer, or other employee assigned to make the decision does not believe the stipulation provides sufficient information to make a decision, then the appeals referee, hearing officer, or other employee assigned to make the decision must reject the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing."

SECTION 6.(a) G.S. 96-15(h) reads as rewritten:

"(h) Judicial Review. – A decision of the Board of Review becomes final 30 days after the date of notification or mailing of the decision, whichever is earlier, unless a party to the decision seeks judicial review as provided in this subsection. Judicial review is permitted only after a party claiming to be aggrieved by the decision has exhausted the remedies provided in this Chapter and has filed a petition for review in the superior court of the county in which the petitioner resides or the county in which the petitioner's principal place of business is located. The petition for review must explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner must serve copies of the petition by personal service or by certified mail, return receipt requested, upon the Division and upon all parties of record to the Division proceedings. The Division must furnish the ~~petitioner~~ petitioner, upon request, the names and addresses of the parties ~~upon request.~~ as found in the records of the Division. The Division is a party to any judicial action involving any of its decisions and may be represented in the judicial action by any qualified attorney who has been designated by it for that purpose. Any questions regarding the requirements of this subsection concerning the service or filing of a petition shall be determined by the superior court. Any party to the Division proceeding may become a party to the review proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

Within 45 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the Division must transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost incurred by the refusal. The court may require or permit subsequent corrections or additions to the record when the court considers the changes desirable."

SECTION 6.(b) This section becomes effective June 1, 2021, and applies to decisions made on or after that date.

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of March, 2021.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 6:27 p.m. this 30th day of March, 2021