



From Unemployment to Reemployment: Preparing Your Business for HB4



The Push for Reform

- > Economic downturn
- > High unemployment
- > More UI claims
- > Employers pay less UI taxes
- > Balance in UI fund insufficient to pay claims
- > NC borrows from Federal Treasury to pay benefits

The Push for Reform

- > NC now owes Federal Treasury approximately \$2.5 billion
- > Employers face continued prospect of annual increases in FUTA taxes until debt paid off
 - > Not expected to occur until 2019 under current system

The Solution – House Bill 4

- > Goal: pay off debt in near term by increasing revenue and decreasing spending
- > How?
 - > Higher UI taxes on employers
 - > Reduced payments to claimants over shorter periods
 - > Fewer opportunities for employees quitting jobs to get benefits
 - > Fewer situations in which employers may avoid charges in discharge cases
 - > Drastic restrictions on use of “attached claims”

Increased UI Tax Rates

- > 0.06% increase in state unemployment tax rate
 - > Minimum: 0.00% to 0.06% of taxable wages
 - > Maximum: 5.7% to 5.76% of taxable wages
 - > Effective January 1, 2014
- > New surtax on employers
 - > Equal to 20% of required contribution / unemployment tax
 - > Results in effective tax rates of 0.07% to 6.91% of taxable wages
 - > Not charged in calendar years in which the UI Trust Fund balance is \$1 billion or more

Reduction in Weekly Benefit Amount

- > Reduction in maximum weekly benefit amount (WBA) from \$535 to \$350
 - > WBA calculation will change from a formula based on claimant's high quarter wages in base period divided by 26, to an amount calculated by dividing total wages earned in last 2 base period quarters by 52, not to exceed \$350

Reduction in Duration of Benefits

- > Reduction in duration of benefits from 13 to 26 weeks to 12 to 20 weeks
 - > Maximum duration will vary depending on NC's seasonal adjusted unemployment rate
 - > If rate is less than or equal to 5.5%, maximum duration of benefits will be 12 weeks
 - > Maximum duration increases by 1 week for every 0.5% increase in the rate, up to 20 weeks when the rate is greater than 9%

Waiting Week for Each Claim

- > Currently, claimants are subject to only one waiting week per benefit year, regardless of number of claims
- > Claimants now must serve a one week waiting period for each claim filed on or after June 30, 2013

New Definition of “Suitable Work”

- > Claimant is disqualified from benefits if s/he chooses not to accept suitable work
- > Currently, to determine whether claimant has been offered suitable work, DES considers:
 - > Degree of risk to health, safety and morals
 - > Physical fitness and prior training and experience
 - > Prospects for securing work in customary occupation
 - > Prior earnings
 - > Distance of the offered work from residence

New Definition of “Suitable Work”

- > On/after June 30, 2013:
 - > DES will consider the factors above only during first 10 weeks of benefit period
 - > After 10 weeks, any work offered to claimant which pays 120% of the weekly benefit amount will be deemed suitable work
 - > If claimant declines, s/he is disqualified from benefits

Elimination of “Good Cause” Reasons for Quitting

- > Claimant who quits must show s/he left work for “good cause attributable to the employer” to receive benefits
- > New law eliminates all but two reasons that currently constitute good cause, including:
 - > Health condition/disability of claimant or family member
 - > Work relocation of spouse (except military spouses)
 - > Inability to work particular shifts because of undue family hardship
- > Only two specific reasons for which an employee may quit work and still qualify for benefits remain
 - > Relocation of a military spouse
 - > Domestic violence, if claimant believes continued employment would jeopardize his/her or family’s safety
- > Remember – any claimant may qualify for benefits if s/he can prove s/he left work for good cause attributable to the employer

Elimination of “Good Cause” Reasons for Quitting

- > New law raises threshold for using reduction in work hours as good cause for leaving work from more than a 20% reduction to more than a 50% reduction
- > New law retains existing threshold for using reduction in pay as good cause at a 15% reduction
 - > Employers may rebut these good cause claims by showing reductions in hours or pay were temporary or caused by claimant’s malfeasance, misfeasance or non-feasance
- > New law increases the maximum period the employer may suspend an employee without triggering eligibility for benefits from 10 days to 30 days

“Substantial Fault” Repealed

- > Currently, employer accounts not charged where the claimant is terminated for “misconduct” or “substantial fault”
 - > For substantial fault, claimants are disqualified for 4 to 13 weeks and then receive benefits, but their employers’ accounts are not charged
 - > Problem – no one pays for benefits paid to claimant after serving the disqualification period
- > On or after June 30, 2013, substantial fault will be eliminated
 - > Employers must establish termination for misconduct in discharge cases to prevent charges to their accounts

“Substantial Fault” Repealed

- > Practical Effects:
 - > More claimants will receive benefits for discharges based on minor to intermediate infractions of work rules not rising to misconduct
 - > But, they will draw reduced benefits for fewer weeks
 - > Claimants and employers no longer may create a “win-win” situation by stipulating to facts to achieve a substantial fault finding

Higher Burden to Prove Misconduct in “Discharge” Claims

- > The burden is on employer to show:
 - > Conduct evincing a willful or wanton disregard of the employer’s interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee, or
 - > Conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to the employer

Proving Misconduct

- > Relatively new statutory examples of misconduct:
 - > Violation of written alcohol or illegal drug policy
 - > Reporting to work significantly impaired by alcohol / illegal drugs
 - > Consumption of alcohol / illegal drugs on employer's premises
 - > Arrest or conviction for offenses involving violence, sex crimes or illegal drugs
 - > Physical violence related to work
 - > Unlawful harassment / creating a hostile work environment
 - > Theft
 - > Forging / falsifying documents or data, including previously submitted employment applications
 - > Violation of written absenteeism policy
 - > Refusal to perform reasonable assigned work tasks
 - > Failure to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months preceding discharge

Action Items for Upper Management

- > Make review of handbooks, policies and codes of ethics/conduct a priority for HR
 - > Ensure existence of written policies covering each statutory example of misconduct
 - > Include clear consequences for non-compliance with policy
 - > Ensure employees acknowledge in writing their receipt and understanding of, and agreement to abide by, policies

Action Items for Upper Management

- > Assign review of discipline policies to ensure they require provision of written documentation to employees for all counseling sessions, performance improvement plans, reprimands and warnings, regardless of whether characterized as “written” or “verbal”
- > Make managers and supervisors accountable for proper documentation

Restrictions on Attached Claims

- > “Attached claims” are claims filed by employers for employees who remain attached to payroll but:
 - > Work less than “three customary scheduled full-time days” in a week
 - > Work less than 60% of “customary scheduled full-time hours” in a week, or
 - > Temporarily have no work available
- > No work search requirements during attachment
- > According to DES, 40% - 50% of claims activity is attributable to attached claims

Restrictions on Attached Claims

- > Changes apply to attached claims filed on or after June 30, 2013
- > New prerequisites for filing attached claims
 - > Must have at least \$0 account balance, or bring account to \$0
 - > Must prepay to DES full cost of benefits payable during attachment before claim is processed
 - > Employers will be reimbursed for unused prepaid amounts
 - > 14 calendar days to prepay after attached claim request is made

Restrictions on Attached Claims

> New Limits

- > Only one attached claim per employee permitted per benefit year*, regardless of length of claim period
- > Attached claim period may not exceed six weeks
 - > If an employer files an attached claim covering a period less than six weeks, that claim will count as the one available claim; multiple claims of less than six weeks may not be combined
- > One week waiting period applies to each attached claim

Restrictions on Attached Claims

- > Practical Effects:
 - > Employers may be able to file two attached claims for an employee in a calendar year because two benefit years may fall within one calendar year
 - > Fewer employers will be able to utilize attached claims
 - > Laid-off employees may need to file regular claims themselves and receive benefits; work search requirements will apply
 - > Potential for higher turnover
 - > Potential for increased reliance on temporary workforce

New Consequences for Employer's Failure to Respond to NCUI 500 AB

- > New DES standard for employer responses:
 - > Employer must provide “sufficient facts to enable DES to make a correct determination under the law without having to contact the employer to obtain any additional information”
- > If benefits are erroneously paid to a claimant at the initial stage, and the employer later appeals and proves misconduct, benefit charges to employer's account may not be reversed if the employer has pattern of failing to respond timely or adequately to DES requests

Resources

- > www.ncesc.com
- > House Bill 4 – available at
<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=hb4&submitButton=Go>
- > House Bill 743 (technical corrections) – available at
<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=H743&submitButton=Go>
- > NCDES Q&A – available at
<http://www.ncesc1.com/individual/2013LawChangeQA.asp>
- > NCDES Memo to NC Employers – available at
<http://www.ncesc1.com/HB4/Memo-on-HB4-Changes-to-UI.pdf>
- > NCDES Employer Training videos – available at
<http://www.youtube.com/user/DESofNC/videos>

Resources

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