

North Carolina Enacts Comprehensive Reform of Unemployment Insurance System

By Ted Kazaglis

February 22, 2013

On his second day as Governor of North Carolina, Pat McCrory signed into law a comprehensive reform of the state's unemployment insurance system. The new law applies to new claims for unemployment benefits filed on or after July 1, 2013. One of House Bill 4's stated purposes is to address North Carolina's unemployment insurance debt — North Carolina's unemployment insurance system currently owes more than \$2.5 billion dollars to the federal government.

One of the most significant provisions of the unemployment law is its substantial reduction of the maximum weekly benefit amounts paid to the unemployed. Under current state law, the maximum weekly benefit amount is set at \$535 and varies from year-to-year as mandated by a statutory formula. The new law reduces the maximum weekly benefit amount to \$350. In addition, under the new law, the maximum weekly benefit amount will not fluctuate year-to-year. It will be calculated on the claimant's average wage during the last two quarters of the individual's base period.

The unemployment law also significantly reduces the number of weeks that the jobless are eligible to receive unemployment benefits. Under the current system, an unemployed worker is generally entitled to receive unemployment benefits for a maximum of 26 weeks (absent any federal extension). Pursuant to the new law, the maximum duration of unemployment benefits will be reduced to 20 weeks. In addition, the duration of unemployment benefits will be based on a sliding scale of 5 to 20 weeks, predicated on North Carolina's seasonal adjustable statewide unemployment rate. For example, when North Carolina's unemployment rate is equal to or below 5.5%, the maximum duration of unemployment benefits will be reduced to 12 weeks. The maximum duration of unemployment benefits will increase by 1 week for each 0.5% increase in North Carolina's unemployment rate, with a maximum duration of 20 weeks when the unemployment rate is greater than 9.0%.

The unemployment law also eliminates "substantial fault" as a means of partially disqualifying claimants from receiving unemployment benefits. Current law allows for a finding of substantial fault to result in a claimant's partial disqualification of between 4 and 13 weeks. Thus, a finding of substantial fault currently results in a reduction of 15% to 50% of unemployment benefits received. However, the unemployment law totally eliminates substantial fault as a means of partial disqualification.

The law's elimination of "substantial fault" likely will result in an even greater emphasis on workplace "misconduct" as the principal basis by which North Carolina employers can defend claims for unemployment benefits. The unemployment law does not change the definition of workplace "misconduct"; it will continue to be defined, in part, as "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." *See*, N.C. Gen. Stat. Section 96-14.6. Best practices for North Carolina employers to defend against unemployment benefit claims include (1) documentation of employees' acknowledgement of receipt of written workplace policies and (2) enforcement and documentation of progressive discipline.

Another change is an increase in the tax contribution rates paid by North Carolina's experience rating employers. The measure applies to contributions payable for calendar quarters beginning on or after January 1, 2014. Minimum contribution rates paid by experience rating employers will rise by 0.06%. Consequently, an employer currently paying the minimum contribution rate (0%) will be liable for a 0.06% rate and one currently paying the maximum (5.7%) will see the rate increased to 5.76%.

Reforms also include elimination of the health exclusion entirely. The exclusion currently allows a claimant to avoid disqualification from benefits if the claimant can prove that he or she left work due to a disability or other health condition. The health exclusion also applies if the claimant proves that he or she left work due to a disability or health condition of the claimant's minor child, parent, or immediate family member.

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Finally, the unemployment law redefines North Carolina's statutory definition of "suitable work," which governs a claimant's continued eligibility for unemployment benefits. The new mandate provides that after a claimant receives 10 weeks of unemployment benefit payments he or she must accept any "suitable work," now defined as any employment offer paying at least 120% of a claimant's weekly benefit amount. Any claimant who fails to accept the offer of "suitable work" faces disqualification from receipt of any further unemployment benefits.

If you have any questions about the new law, please contact the Jackson Lewis attorney with whom you regularly work.

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