



### Employment Security Commission of North Carolina

**Beverly Eaves Perdue**  
*Governor*

**Lynn R. Holmes**  
*Chairman*

### FAX Transmission Cover Sheet

20 PAGES (Including Cover)

**TO:** Ms. Gay Gilbert  
Administrator  
Office of Workforce Security

Telephone Number: ( 202 ) - ext.

Fax Number: ( 202 ) 693 - 2874

**FROM:** Lynn Holmes, Chairman  
Employment Security Commission of North Carolina

Telephone Number: ( 919 ) 733 - 7546 ext.

Fax Number: ( ) -

**COMMENTS:**

Please find amended application.

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Unemployment Insurance

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Labor Market Information



## Employment Security Commission of North Carolina

Post Office Box 25903, Raleigh North Carolina 27611 919-733-7546

**Beverly Eaves Perdue**  
Governor

**Lynn R. Holmes**  
Chairman

October 25, 2010

Gay Gilbert, Administrator  
Office of Workforce Security  
200 Constitution Avenue NW  
Room S-4231  
Washington, DC 20210

Dear Ms. Gilbert:

Pursuant to the provisions outlined in UIPL 14-09, North Carolina is applying for both the one-third and the two-third's Unemployment Compensation Modernization incentive payments pursuant to Section 2003(a) of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

North Carolina enacted an alternate base period in 1997 and it is codified in G.S. 96-8(18) (Attachment 1). The alternate base period definition is a permanent provision of our state law.

North Carolina enacted legislation in 2003 expanding coverage for part-time workers, victims of domestic violence, trailing spouse, and to those leaving work to care for sick family members. In 2009, the Employment Security Commission of North Carolina (ESCNC) amended these provisions in House Bill 877 (Attachment 2) to meet the requirements as suggested by USDOL. These changes are reflected in the following statutes:

- 1) Part Time Workers - G.S. 96-13(a)(6) (Attachment 3)
- 2) Separation for Compelling Family Reasons (Attachment 4)
  - a. Domestic Violence - G.S. 96-14(1f)
  - b. Leaving Work Due to a Disability or Health Reason - G.S. 96-14(1)
  - c. Leaving Work to Accompany Spouse - G.S. 96-14(1d)

ESCNC requests that an administrative sub-account be established in the State's Account in the Unemployment Trust Fund (UTF) as prescribed in UIPL No. 32-09. In Section 14.17.g of the 2010-11 budget ratified by the General Assembly of North Carolina, ESCNC was appropriated the sum of \$205,063,552 of the modernization funds to be used as follows: 1) to design and build an integrated unemployment benefit and tax accounting system; and 2) the remaining funds shall be used for the operation of the unemployment insurance program (Attachment 5). ESCNC plans to incorporate the findings of the USDOL-sponsored multi-state Southeastern Consortium in the feasibility study in the design and construction of the integrated system. (Attachment 6)



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With regards to the provisions contained in Attachment 4, North Carolina amended the domestic violence provision found in General Statute 96-14(1f) to make it applicable to the claimant, the claimant's spouse, parents and children under the age of eighteen which resulted in expanded eligibility under this provision.

I certify, in good faith, that the all provisions referenced above are currently in effect and are not subject to discontinuation under any circumstances other than repeal by the legislature.

If you have any questions on this application, please feel free to contact Lynn R. Holmes, Chairman, or David L. Clegg, Deputy Chairman and Chief Operating Officer.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn R. Holmes", with a long horizontal flourish extending to the right.

Lynn R. Holmes  
Chairman

Attachments

**2007 Alternate Base Period**  
**Attachment 1**

**G.S. 96-8(18)**

- (18) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subdivision, "alternative base period" means the last four completed calendar quarters.

Attachment 2

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

SESSION LAW 2009-301  
HOUSE BILL 877

AN ACT TO PROVIDE THAT AN INDIVIDUAL WILL NOT BE DENIED UNEMPLOYMENT COMPENSATION SOLELY BECAUSE THE INDIVIDUAL IS SEEKING ONLY PART-TIME WORK, TO REMOVE DISQUALIFYING CONDITIONS RELATED TO SEPARATING FROM WORK FOR COMPELLING FAMILY REASONS INCLUDING DOMESTIC VIOLENCE, ILLNESS, OR DISABILITY, AND TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 96-8 is amended by adding a new subdivision to read:

"(29) Seeking only part-time work. – Where an individual is available to work for a number of hours per week that are comparable to the individual's part-time work experience in his or her base period."

**SECTION 2.** G.S. 96-13(a)(6) reads as rewritten:

"(6) ~~An unemployed individual shall not be disqualified for eligibility for unemployment compensation benefits solely on the basis that the individual is only available for part-time work. If an individual restricts his or her eligibility to part-time work, the individual may be considered able and available to work if it is determined that all the following conditions exist:~~

- a. ~~The claimant's monetary eligibility is based predominately on wages from part-time work.~~
- b. ~~The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.~~
- e. ~~The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time service.~~

~~This subdivision shall not be construed to amend subdivision (3) of this subsection as it applies to students or G.S. 96-16 as it applies to seasonal workers.~~

Notwithstanding any other provisions of this Chapter, an unemployed individual shall not be ineligible for unemployment compensation benefits under any provision of the Employment Security Law relating to availability for work, active search for work, or refusal to accept work solely because the individual is seeking only part-time work as defined in G.S. 96-8(29), provided that a majority of weeks of work in the individual's base period include part-time work."

**SECTION 3.** G.S. 96-14 reads as rewritten:

**"§ 96-14. Disqualification for benefits.**

An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.



Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the ~~leaving and prevented the employee from doing other alternative work offered by the employer which pays the minimum wage or eighty five percent (85%) of the individual's regular wage, whichever is greater;~~ leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

- (1a) Where an individual leaves work, the burden of showing good cause attributable to the employer rests on said individual, and the burden shall not be shifted to the employer.
- (1b) Where an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than twenty percent (20%) of the customary scheduled full-time work hours in the establishment, plant, or industry in which he was employed, said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in work hours shall not constitute good cause attributable to the employer for leaving work.
- (1c) Where an individual leaves work due solely to a unilateral and permanent reduction in his rate of pay of more than fifteen percent (15%), said leaving shall constitute good cause attributable to the employer for leaving work. Provided however that if said reduction is temporary or was occasioned by malfeasance, misfeasance or nonfeasance on the part of the individual, such reduction in pay shall not constitute good cause attributable to the employer for leaving work.
- (1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall ~~serve a time certain disqualification for benefits for a period of two weeks beginning the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits.~~ constitute good cause for leaving work. Notwithstanding the other provisions of this subdivision, any claimant leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work.

Benefits paid on the basis of this subdivision shall not be charged to the account of the employer.

- (1e) For the duration of an individual's unemployment, beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits, if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because the individual, without good cause attributable to the employer and after receiving notice from the employer, refused to return to work for a former employer when recalled within four weeks from a layoff, or when recalled in any week in which the work search requirements under G.S. 96-13 have been waived. As used in this subsection, the term "layoff" means a temporary separation from work due to no work available for the individual at the time of separation from work and the individual is retained on the employer's payroll and is a continuing employee subject to recall by the employer.
- (1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes or there is evidence of domestic violence, sexual offense, or stalking, or the claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged. Evidence of domestic violence, sexual offense, or stalking may include: (i) law enforcement, court, or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault; ~~and~~ or (iii) documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking. This provision is only applicable to the claimant and claimant's spouse, parents, and children under 18 years of age, whether the relationship is a biological, step-, half-, or in-law relationship.
- (1g) For purposes of this Chapter, separation or discharge solely due to an inability to accept work during a particular shift as a result of an undue family hardship shall constitute good cause for leaving work. Benefits paid on the basis of this section shall not be charged to the account of the employer.
- (2) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he was discharged for misconduct connected with his work. Misconduct connected with the work is defined as conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.
- "Discharge for misconduct with the work" as used in this section is defined to include but not be limited to separation initiated by an employer for reporting to work significantly impaired by alcohol or illegal drugs; consuming alcohol or illegal drugs on employer's premises; conviction by a court of competent jurisdiction for manufacturing, selling, or distribution of a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2) while in the employ of said employer.
- (2a) For a period of not less than four nor more than 13 weeks beginning with the first day of the first week during which or after the disqualifying act occurs

with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time the claim is filed, unemployed because he was discharged for substantial fault on his part connected with his work not rising to the level of misconduct. Substantial fault is defined to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job but shall not include (1) minor infractions of rules unless such infractions are repeated after a warning was received by the employee, (2) inadvertent mistakes made by the employee, nor (3) failures to perform work because of insufficient skill, ability, or equipment. Upon a finding of discharge under this subsection, the individual shall be disqualified for a period of nine weeks unless, based on findings by the Commission of aggravating or mitigating circumstances, the period of disqualification is lengthened or shortened within the limits set out above. The length of the disqualification so set by the Commission shall not be disturbed by a reviewing court except upon a finding of plain error.

- (2b) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time such claim is filed, unemployed because the individual has been discharged from employment because a license, certificate, permit, bond, or surety that is necessary for the performance of his employment and that the individual is responsible to supply has been revoked, suspended, or otherwise lost to him, or his application therefor has been denied for a cause that was within his power to control, guard against, or prevent.
- (3) For the duration of his unemployment beginning with the first day of the first week in which the disqualifying act occurs if it is determined by the Commission that such individual has failed without good cause (i) to apply for available suitable work when so directed by the employment office of the Commission; or (ii) to accept suitable work when offered him; or (iii) to return to his customary self-employment (if any) when so directed by the Commission. Provided further, an otherwise eligible individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall not be denied benefits because he refuses to apply for or accept suitable work during such period of training.

In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
  - b. If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
  - c. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor ~~organization-organization~~;
  - d. If the position offered is full-time work and the individual meets the part-time worker requirements of G.S. 96-13(a)(6).
- (4) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an



individual files a claim for benefits if it is determined by the Commission that:

- a. Such individual has failed without good cause to attend a vocational school or training program when so directed by the Commission;
  - b. Such individual has discontinued his training course without good cause; or
  - c. If the individual is separated from his training course or vocational school due to misconduct.
- (5) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place within this State which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit.
- (6) If the Commission finds he is customarily self-employed and can reasonably return to self-employment.
- (6a) For the duration of his unemployment beginning with the first day of the first week during which or after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that the individual is, at the time the claim is filed, unemployed because the individual's ownership share of the employing entity was voluntarily sold and, at the time of the sale:
- a. The employing entity was a corporation and the individual held five percent (5%) or more of the outstanding shares of the voting stock of the corporation;
  - b. The employing entity was a partnership, limited or general, and the individual was a limited or general partner; or
  - c. The employing entity was a proprietorship, and the individual was a proprietor.
- (7) For any week after June 30, 1939, with respect to which he shall have and assert any right to unemployment benefits under an employment security law of either the federal or a state government, other than the State of North Carolina.
- (8) For any week with respect to which he has received any sum from the employer pursuant to an order of any court, the National Labor Relations Board, any other lawfully constituted adjudicative agency, or by private agreement, consent or arbitration for loss of pay by reason of discharge. When the amount so paid by the employer is in a lump sum and covers a period of more than one week, such amount shall be allocated to the weeks in the period on such a pro rata basis as the Commission may adopt and if the amount so prorated to a particular week would, if it had been earned by the claimant during that week of unemployment, have resulted in a reduced benefit payment as provided in G.S. 96-12, the claimant shall be entitled to receive such reduced payment if the claimant was otherwise eligible.

Further provided, any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment of benefits and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly (or within 5 days) to the Commission by the employer for application against the overpayment. Provided, however, the removal of any charges made against

the employer as a result of such previously paid benefits shall be applied to the calendar year in which the overpayment is transmitted to the Commission, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the Commission or the failure of an employer to deduct an overpayment shall be subject to the same procedures for collection as is provided for contributions by G.S. 96-10. It is the purpose of this paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall be construed accordingly.

- (9) The amount of compensation payable to an individual for any week which begins after July 2, 1977, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount rounded to the nearest dollar equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week.

The amount of benefits payable to an individual for any week which begins after July 1, 1981, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by the amounts of any such pension, retirement or retired pay, annuity, or other payment contributed to in part or in total by the individual's base period employers; provided, however, that the amount of all payments received by an individual under the Railroad Retirement Act shall be deducted from the individual's benefit amount. Provided further, that all such reduced weekly benefit amounts shall be rounded to the nearest lower full dollar amount (if not a full dollar amount).

- (10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:
- a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;
  - b. Subsequently becomes unemployed through no fault of his own; and
  - c. Meets the availability requirements of the law.

Any time certain disqualification imposed by the provisions of subsections (1), (1D), and (2A) shall be removed by serving the disqualification imposed as provided by this subsection.

Provided for good cause shown the Commission in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period to a time certain but not less than five weeks. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification.

- (11) a. Notwithstanding any other provisions of this Chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable Federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work.

- b. For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.
- (12) Notwithstanding any other provision of this Chapter, no otherwise eligible individual shall be denied benefits for any weeks if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work solely as a result of a lack of work caused by the bankruptcy of his employer."

**SECTION 4.** This act becomes effective January 1, 2010.

In the General Assembly read three times and ratified this the 9<sup>th</sup> day of July, 2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 5:15 p.m. this 17<sup>th</sup> day of July, 2009

**2009 Part Time Worker Amendment**  
**Attachment 3**

**G.S. 96-13(a)(6)**

- (6) Notwithstanding any other provisions of this Chapter, an unemployed individual shall not be ineligible for unemployment compensation benefits under any provision of the Employment Security Law relating to availability for work, active search for work, or refusal to accept work solely because the individual is seeking only part-time work as defined in G.S. 96-8(29), provided that a majority of weeks of work in the individual's base period include part-time work.

**G.S. 96-8(29)**

- (29) Seeking only part-time work. – Where an individual is available to work for a number of hours per week that are comparable to the individual's part-time work experience in his or her base period.

The General Assembly of North Carolina amended this section of Chapter 96 by defining part time work in G.S. 96-8(29). Furthermore, previous statutes defined part time work according to the percentage of wages earned in part time work as opposed to the number of weeks spent in part time employment.

## **2009 Compelling Family Reason Amendment** **Attachment 4**

### **Domestic Violence – G.S. 96-14(1f)**

- (1f) For the purposes of this Chapter, any claimant's leaving work, or discharge, if the claimant has been adjudged an aggrieved party as set forth by Chapter 50B of the General Statutes or there is evidence of domestic violence, sexual offense, or stalking, or the claimant has been granted program participant status pursuant to G.S. 15C-4 as the result of domestic violence committed upon the claimant or upon a minor child with or in the custody of the claimant by a person who has or has had a familial relationship with the claimant or minor child, shall constitute good cause for leaving work. Benefits paid on the basis of this section shall be noncharged. Evidence of domestic violence, sexual offense, or stalking may include: (i) law enforcement, court, or federal agency records or files; (ii) documentation from a domestic violence or sexual assault program if the claimant is alleged to be a victim of domestic violence or sexual assault; or (iii) documentation from a religious, medical, or other professional from whom the claimant has sought assistance in dealing with the alleged domestic violence, sexual abuse, or stalking. This provision is only applicable to the claimant and claimant's spouse, parents, and children under 18 years of age, whether the relationship is a biological, step-, half-, or in-law relationship.

Although North Carolina had previously passed a domestic violence provision in 2001, NCEC requested this law be amended in 2009 to meet the requirements set forth in UIPL 14-09. The amended bill expanded coverage to the claimant's spouse, parents, and children under the age of 18, whether the relationship is a biological, step-, half-, or in-law relationship.

### **Disability G.S. 96-14(1)**

An individual shall be disqualified for benefits:

- (1) For the duration of his unemployment beginning with the first day of the first week after the disqualifying act occurs with respect to which week an individual files a claim for benefits if it is determined by the Commission that such individual is, at the time such claim is filed, unemployed because he left work without good cause attributable to the employer.

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

Where an employee is notified by the employer that such employee will be separated from employment on some future date and the employee leaves work prior to this date because of the impending separation, the employee shall be deemed to have left work voluntarily and the leaving shall be without good cause attributable to the employer. However, if the employee shows to the satisfaction of the Commission that it was impracticable or unduly burdensome for the employee to work until the announced separation date, the permanent disqualification imposed for leaving work without good cause attributable to the employer may be reduced to the greater of four weeks or the period running from the beginning of the week during which the claim for benefits was made until the end of the week of the announced separation date.

An employer's placing an individual on a bona fide disciplinary suspension of 10 or fewer consecutive calendar days shall not constitute good cause for leaving work.

As suggested by the staff of USDOL, ESC amended existing provisions for claimants who left work due to a disability or family illness. The language in House Bill 877 expanded the coverage for those who were discharged from employment due to a disability or health condition. Furthermore, the previous statute limited the employee from separating from their job if the employer offered the individual alternate work that paid either minimum wage or 85% of the individual's regular wage. The General Assembly amended this section to remove such restrictions on the separation. The amendment of these two provisions demonstrates that the individual left work to provide care for a period of time longer than the employer was willing to accommodate.

#### **Trailing Spouse G.S. 96-14(1d)**

- (1d) For the purposes of this Chapter, any claimant leaving work to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work shall constitute good cause for leaving work. Notwithstanding the other provisions of this subdivision, any claimant leaving work to accompany the claimant's spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed good cause for leaving work. Benefits paid on the basis of this subdivision shall not be charged to the account of the employer.

## EMPLOYMENT SECURITY COMMISSION FUNDS

### Attachment 5

**SECTION 14.13.** Section 14.17 of S.L. 2009-451 reads as rewritten:

**"SECTION 14.17.(a)** Funds from the Employment Security Commission Reserve Fund shall be available to the Employment Security Commission of North Carolina to use as collateral to secure federal funds and to pay the administrative costs associated with the collection of the Employment Security Commission Reserve Fund surcharge. The total administrative costs paid with funds from the Reserve in the 2009-20102010-2011 fiscal year shall not exceed two million five hundred thousand dollars (\$2,500,000).

**"SECTION 14.17.(b)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina the sum of twenty million dollars (\$20,000,000) for the 2009-20102010-2011 fiscal year to be used for the following purposes:

- (1) Nineteen million five hundred thousand dollars (\$19,500,000) for the operation and support of local Employment Security Commission offices.
- (2) Two hundred thousand dollars (\$200,000) for the State Occupational Information Coordinating Committee to develop and operate an interagencyto operate the system to trackthat tracks former participants in State education and training programs.
- (3) Three hundred thousand dollars (\$300,000) to maintain compliance with Chapter 96 of the General Statutes, which directs the Commission to employ the Common Follow-Up Management Information System to evaluate the effectiveness of the State's job training, education, and placement programs.

**"SECTION 14.17.(c)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million dollars (\$1,000,000) for the 2009-20102010-2011 fiscal year to fund State initiatives not currently funded through federal grants.

**"SECTION 14.17.(d)** There is appropriated from the Employment Security Commission Reserve Fund to the Employment Security Commission of North Carolina an amount not to exceed one million five hundred thousand dollars (\$1,500,000)one million two hundred thousand dollars (\$1,200,000) for the 2009-20102010-2011 fiscal year to fund a system upgrade to the Common Follow-Up Management Information System.

**"SECTION 14.17.(e)** The Employment Security Commission of North Carolina may use funds in the Employment Security Commission Reserve Fund to contract with nonprofit organizations to provide dislocated workers with assistance in obtaining health care benefits, receiving vocational training, and securing employment.

**"SECTION 14.17.(f)** There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of one million dollars (\$1,000,000) for the 2010-2011 fiscal year to fund the 'Tar Heel Works Program' which provides work based training opportunities to recipients of unemployment insurance benefits. The Tar Heels Works Program must meet all of the following factors:

- (1) The training, even though it includes actual operation of the facilities of the

employer, is similar to what would be given in a vocational school or academic educational instruction.

(2) The training is for the benefit of the trainee.

(3) The trainees do not displace regular employees, but work under their close observation.

(4) The employer who provides the training derives no immediate advantage from the activities of the trainees and, on occasion, the employer's operations may actually be impeded.

(5) The trainees are not necessarily entitled to a job at the conclusion of the training period.

(6) The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

**"SECTION 14.17.(g)** Of the funds credited to and held in the State of North Carolina's account in the Unemployment Trust Fund by the Secretary of the Treasury of the United States pursuant to and in accordance with section 903 of the Social Security Act and pursuant to Title II of P.L. 111-5, the Assistance for Unemployed Workers and Struggling Families Act, the Employment Security Commission of North Carolina may expend the sum of two hundred five million sixty-three thousand five hundred fifty-two dollars (\$205,063,552) as follows: (i) one hundred million dollars (\$100,000,000) shall be used to design and build the integrated unemployment insurance benefit and tax accounting system; and (ii) the remaining funds shall be used for the operation of the unemployment insurance program."



Sub-Account  
Attachment 6

In response to your inquiry for clarification of North Carolina's application for the Modernization grant funds, ESCNC provides the following addendum to the application dated October 1, 2010.

- The current State Appropriation for administrative purposes is valid through June 30, 2011. While we do not expect to have the funds obligated by this time, the Employment Security Commission of North Carolina (ESCNC) will request and anticipate receiving a provision in the 2011-12 State appropriations that will give the agency until June 30, 2012 to obligate these funds.
- In the original application, I indicated that the Agency plans to incorporate the findings of the Southeastern Consortium in the design of a new integrated system. The timeframe for completion of this study is September 2011.
- The Commission anticipates being able to obligate the funds before the expiration of the next appropriation on June 30, 2012. This gives the State sufficient time to review and modify the recommendations of the Consortium, issue a Request for Proposal (RFP), select a vendor, and obligate the funds.

Also noted in your summary of ESCNC's application was concern regarding claimants who separate from their employment for compelling family reasons related to leaving for the illness or disability of a family member. In order to further explain or define the provision, the Chief Legal Counsel has issued ESC Interpretation Number 272 (Attachment 7). This interpretation provides clarifying policy in adjudicating separations associated with North Carolina General Statutes 96-14(1).

Attachment 7

## EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

### ESC INTERPRETATION NO. 272

TO: Employment Security Commission

FROM: Thomas H. Hodges, Jr., Chief Counsel

SUBJECT: Application of the Provision under N.C.G.S. §96-14(1)  
*Relating to Separations Due to Disability or Other Health Reasons*

Since the 2009 amendment of the statutory provision relating to separations due to disability or other health reasons under N.C.G.S. §96-14(1), several questions have been received as to its applicability. In a question/answer format, this Interpretation provides guidance to those ESC employees who are authorized to raise and decide issues pursuant to G.S. §96-15.

#### STATUTORY PROVISION:

Where an individual is discharged or leaves work due solely to a disability incurred or other health condition, whether or not related to the work, he shall not be disqualified for benefits if the individual shows:

- a. That, at the time of leaving, an adequate disability or health condition of the employee, of a minor child who is in the legally recognized custody of the individual, of an aged or disabled parent of the individual, or of a disabled member of the individual's immediate family, either medically diagnosed or otherwise shown by competent evidence, existed to justify the leaving; and
- b. That, at a reasonable time prior to leaving, the individual gave the employer notice of the disability or health condition.

#### QUESTION:

Who is "a member of the individual's "immediate family"?"

#### ANSWER:

G.S. §96-8(27) defines "immediate family" as follows:

"Immediate family" means an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship.

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**QUESTION:**

Does "is in the legally recognized custody," mean that the individual maintains "*legal physical custody*" of the minor child?

**ANSWER:**

No. The individual merely has to show that a legal relationship exists between the individual and the minor child and the individual provides care to the minor child.

**QUESTION:**

How broadly and/or liberally shall the terms "disability" and "disabled" be defined and applied?

**ANSWER:**

Because the purpose of this provision is to hold an employee not disqualified from receiving unemployment insurance benefits when he/she separates from employment because a necessity exists to provide care to a member of his/her immediate family, "disability" and "disabled" are broadly defined and must be applied liberally. That is, "disability" and "disabled" include any physical or mental disorder or impairment that impairs an individual's ability to perform a major life activity. A major life activity includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. **Neither the physical nor mental disorder or impairment nor the resulting disability is required to be total or permanent.**

**QUESTION:**

Does "adequate . . . other health condition, . . . either medically diagnosed or otherwise shown by competent evidence," apply to a parent who is not "aged"?

**ANSWER:**

Yes. This provision must be applied when an employee must separate from employment because a necessity exists to provide care, temporarily or permanently, to any member of the employee's immediate family. **The "other health condition" is not required to be permanent.**

**QUESTION:**

Is an individual required to exhaust all available paid employment-related leave before leaving work under the above statutory provision to avoid being disqualified from receiving unemployment insurance benefits?

**ANSWER:**

Yes.

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PAGE THREE OF THREE

**QUESTION:**

Is an individual required to exhaust all available unpaid employment-related leave before leaving work under the above statutory provision to avoid being disqualified from receiving unemployment insurance benefits?

**ANSWER:**

Yes and No. **Yes**, if the individual would be able to return to work on or before the expiration of the available leave. **No**, if the individual conclusively shows that unpaid leave would be insufficient to cover the length of his/her required absence from work and the employer would not excuse absences beyond the

**ANSWER:**

Consistent with the ESC precedent decisions and North Carolina court cases addressing the existence of good cause for not providing notice of an absence from scheduled work when deciding whether an individual was discharged from work due to misconduct or substantial fault, Yes and No. **Yes**, the individual should be disqualified if the evidence establishes that it was possible for the individual to do so and he/she did not have good cause for not giving prior notice. **No**, the individual should not be disqualified if he/she had good cause for not giving prior notice, but did provide notice as soon as reasonably possible. In determining the existence of good cause, the test to be applied is whether the individual has acted as a person of ordinary prudence under the existing circumstances.

**SUMMARY:**

If the information received from a claimant and employer established all the elements required under this statutory provision, subsequent adjudication should conclude that there was a non-disqualifying separation from employment. The employer's account will not be charged the benefits paid to the claimant.

Adopted as an official Interpretation by the Employment Security Commission on October 25, 2010.