



HOUSE BILL 931: UI Technical Changes.

2017-2018 General Assembly

Committee:	House Finance	Date:	May 31, 2018
Introduced by:	Reps. Howard, Arp, Bumgardner, Warren	Prepared by:	Greg Roney Staff Attorney
Analysis of:	PCS to First Edition H931-CSTMxfr-25		

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 931 would make the following changes to the unemployment insurance (UI) system:*

- *Exclude direct sellers from the definition of employment for UI.*
- *Delay the effective date for a requirement that employers respond to UI claims in 10 days until January 1, 2019.*
- *Reduce the number of job contacts required for UI to 3 contacts per week.*
- *Require electronic filing of employer's quarterly report if the employer has 10 or more employees (currently, employer with 25 or more employees must file electronically).*
- *Create a procedure to withdraw a UI claim for good cause.*

Compared to the first edition of House Bill 931, the PCS deletes a provision that excluded state and local government interns from UI coverage. The US Department of Labor (USDOL) found this provision did not conform with federal law.

BILL ANALYSIS AND CURRENT LAW:

Section	Bill Analysis and Current Law	Effective Date
1	<p>Section 1 would exclude direct sellers from State UI coverage, conforming to the federal treatment of direct sellers.</p> <p>Under current State law, the State UI system generally covers employees and excludes independent contractors. An employer-employee relationship is determined under the "usual common law rules applicable in determining the employer-employee relationship." I.R.C. § 3121(d)(2). Individuals representing companies that sell goods and services directly to consumers (e.g., Tupperware, Avon, Mary Kay) could be employees or independent contractors depending on the level of control exercised by the company. The State UI system currently excludes some groups of workers by statute, such as real estate brokers and securities salesmen.</p> <p>Under federal law, individuals working for direct sellers are not treated as employees (called "statutory non-employees") for federal unemployment tax (FUTA). I.R.C. § 3508. Federal law defines three primary requirements as follows: (1) engaged in the trade or business of selling</p>	7/1/2018

Karen Cochrane-Brown
Director

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	consumer products in the home or otherwise than in a permanent retail establishment; (2) substantially all the remuneration for the performance of the services is directly related to sales or other output rather than to the number of hours worked; and (3) the written contract between the individual and the direct seller provides that the individual will not be treated as an employee.	
2	<p>Section 2 would delay the effective date until January 1, 2019 for a requirement that employers respond to unemployment insurance claims in 10 days. The effective date is currently July 1, 2018.</p> <p>Section 3.2(a) of S.L. 2017-8 amended G.S. 96-15(b)(2) to reduce the time period for an employer to respond to an unemployment insurance claim. Before S.L. 2017-8, an employer had 14 days. S.L. 2017-8 reduced the time period to 10 days effective October 1, 2017. Section 6 of S.L. 2017-203 delayed the effective date until July 1, 2018. The PCS delays the effective date again until January 1, 2019.</p> <p>The effective date has been delayed to allow the Department of Commerce's Division of Employment Security (DES) to implement a computerized system, called SCUBI (Southeastern Consortium Unemployment Benefits Initiative), to allow electronic filing of the employer's response.</p>	When law
3	Section 3 would reduce the number of job contacts that a UI claimant must make per week to 3. Under current law, 5 job contacts per week are required. Before 2016, 2 job contacts per week were required.	7/1/2018
4	Section 4 would require electronic filing of employer's quarterly report if the employer has 10 or more employees. Current law requires electronic filing if the employer has 25 or more employees.	1/1/2019
5	Section 5 would establish a statutory procedure for a UI claimant to withdraw the claim for UI benefits. A claim for UI benefits can be withdrawn within 10 days from the notice of the claimant's monetary determination and after a finding of good cause by DES.	7/1/2018

EFFECTIVE DATE: The effective date for each section appears in the table above.