



2019-2020 General Assembly

SENATE BILL 704: COVID-19 Recovery Act , Sec. 1.2: Flexibility to Administer Unemployment Compensation and SUTA Tax Credit

Committee:
Introduced by:
Analysis of: Sec. 1.2 of S.L. 2020-3

Date: August 3, 2020
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OVERVIEW: Section 1.2 of S.L. 2020-3 authorizes unemployment insurance benefits (UI) for employees affected by the coronavirus emergency due to the employer temporarily ceasing operations or reducing hours or the employee being diagnosed with coronavirus or being quarantined by a health care provider or government official.

Section 1.2 of the act also grants employers a credit equal to the employer's first quarter UI tax due, effectively eliminating UI tax for the first quarter of 2020.

Section 1.2 of the act became effective May 4, 2020; applies retroactively beginning March 10, 2020; and expires on the earlier of: the rescission of Executive Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID 19 or December 31, 2020.

CURRENT LAW: Chapter 96 establishes the State's UI system that provides UI benefits to employees who lose weekly earnings through no fault of their own. Employers pay UI taxes to fund the system based on tax rates which are experience rated to reflect each employer's usage of the UI system.

An individual's eligibility for a weekly benefit amount is determined on a week-to-week basis. One of the requirements for eligibility is that the individual must be able to work, available to work, actively seeking work, and accepts suitable work when offered. Except in limited circumstances, each individual must file a weekly claim. UI benefits are not payable during the first week of a claim ("waiting week").

BILL ANALYSIS: Section 1.2(a) of S.L. 2020-3 enacts new G.S. 96-14.15 granting UI benefits to employees affected by the coronavirus emergency, a credit against UI taxes for employers; and administrative flexibility to administer the UI program during the emergency. The Background section of this summary outlines the executive orders and actions by the federal government that relate to this act.

Employees will receive UI benefits if the employer temporarily ceases operations due to the coronavirus; the employer reduces the hours of employment due to the coronavirus; the employee has a current diagnosis of the coronavirus; or the employee is quarantined at the instruction of a health care provider or a government official.

UI benefits paid under new G.S. 96-14.15 are exempt from the waiting week, work search, and in-person reporting requirements. An employer's UI account is not experience rated for the payments made (i.e. employer's UI accounts are not charged for the benefits paid).

Employers are allowed to file the UI claim on behalf of an "attached" employee. An attached claim is one an employer files on behalf of employees that will remain "attached" to the employer's business. Allowing an employer to file an attached claim for employees simplifies the process because each claimant does not need to file a separate claim, and it expedites the process because The Department Commerce's Division

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of Employment Security (DES) is able to forego the customary 10-14 days it takes to contact and receive a response from an employer concerning the reason for separation. Attached claims also mitigate overpayments that may result when a claimant returns to work and fails to properly notify DES.

Section 1.2(a) also allows a tax credit against the employer's contributions in an amount equal to the amount of contributions payable on the report for the first quarter filed by the employer on or before April 30, 2020. If an employer paid the UI tax for the first quarter, the credit will be applied to the UI tax for the second quarter due on or before July 31, 2020. If the amount of the credit exceeds the amount of UI tax due on the report for the second quarter, the excess credit amount is considered an overpayment and will be refunded to the employer.

EFFECTIVE DATE: Section 1.2 of S.L. 2020-3 became effective May 4, 2020; applies retroactively beginning March 10, 2020; and expires on the earlier of: 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 December 31, 2020.

BACKGROUND: Sections 1.2(a) and 1.2(b) affirm the flexibility to administer unemployment compensation, as allowed by Executive Orders No. 118 and 131, and encouraged by Congress under the Families First Coronavirus Response Act. The federal legislation provided emergency grant funding to the states in anticipation of the rapid influx of unemployment claims and encouraged states to ease eligibility requirements and access to UI, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. In response to that legislation, the US Department of Labor issued guidance on the following UI issues related to COVID-19:

- Determining whether an individual is "unemployed".
- Determining if the individual is able to work, available to work, and actively seeking work.
- Non-charging of employer accounts.
- Eliminating the waiting week.

On March 17, 2020, the Governor issued Executive Order 118 broadening UI benefits in response to COVID-19 to the maximum extent permitted by federal law. On April 9, 2020, the Governor issued Executive Order 131 authorizing DES to allow attached claims.

Cindy Avrette with the Legislative Analysis Division substantially contributed to this summary.