

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1096

Introduced by

Industry, Business and Labor Committee

(At the request of Job Service North Dakota)

1 A BILL for an Act to create and enact a new subdivision to subsection 31 of section 52-01-01
2 and a new subdivision to subsection 2 of section 52-04-07 of the North Dakota Century Code,
3 relating to the definition of wages and to payment of unemployment compensation benefits; to
4 amend and reenact section 52-01-02, subdivision b of subsection 2 of section 52-04-07,
5 sections 52-04-09 and 52-04-10, subsection 8 of section 52-06-02, and subdivision d of
6 subsection 2 of section 52-06-04 of the North Dakota Century Code, relating to unemployment
7 compensation records and payment of and eligibility for unemployment compensation benefits;
8 and to provide a penalty.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1.** A new subdivision to subsection 31 of section 52-01-01 of the North
11 Dakota Century Code is created and enacted as follows:

12 Payments that qualify as supplemental unemployment compensation paid by
13 an employer to former employees if those payments are paid pursuant to a
14 plan that meets the following requirements:

- 15 (1) Benefits are paid only to unemployed former employees who are laid
16 off by the employer;
17 (2) Eligibility for benefits depends on meeting prescribed conditions after
18 termination;
19 (3) The amount of weekly benefits payable is based upon state
20 unemployment benefits, other compensation allowable under state law,
21 and the amount of regular weekly pay of that former employee;
22 (4) The duration of the benefits is affected by the fund level and employee
23 seniority;

(5) The right to benefits does not accrue until a prescribed period after termination;

(6) Benefits are not attributable to the performance of particular services;

(7) No employee has any right to the benefits until qualified and eligible to receive benefits; and

(8) Benefits may not be paid in a lump sum.

SECTION 2. AMENDMENT. Section 52-01-02 of the North Dakota Century Code is amended and reenacted as follows:

52-01-02. Employing unit to keep records - Reports of employing unit -

~~**Inspection Public inspection prohibited - Exception - Penalty.** Each employing unit shall keep true and accurate work records containing such information as the bureau may prescribe. The records must be open to inspection and may be copied by the bureau or its authorized representatives at any reasonable time as often as may be necessary. The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or the chairman, deems necessary for the effective administration of the North Dakota Unemployment Compensation Law. In addition, the bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the workers compensation bureau deems necessary for effective administration of the North Dakota Workers' Compensation Law set forth in title 65. Such reports must be provided to the workers compensation bureau by the bureau or the chairman of any appeal tribunal. All records, including electronic records as defined in section 9-16-01, of the employers doing business in this state showing or reflecting in any way upon the amount of wage expenditure by or upon payments for services performed for those employers are always open for inspection by employees of job service North Dakota who are assigned responsibility to do so for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information necessary for the agency to administer this title. An employer who refuses to submit the employer's records, including electronic records as defined in section 9-16-01, for inspection by an identified and assigned employee of job service North Dakota is subject to a civil penalty of five hundred dollars for each offense. The agency shall collect the penalty by civil action in the name of the state and shall deposit any penalty~~

collected under this section to the credit of the fund established by section 52-04-22.
Information ~~thus~~ obtained pursuant to this section may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or the claimant's legal representative at a hearing before ~~an appeal tribunal~~ a hearing officer or the ~~bureau~~ agency must be supplied with information from such records to the extent necessary for the proper presentation of the ~~claim~~ appeal.

SECTION 3. AMENDMENT. Subdivision b of subsection 2 of section 52-04-07 of the North Dakota Century Code is amended and reenacted as follows:

b. With benefits paid to an individual who ~~left~~, during the base period, either:

- (1) ~~Left~~ the employment of ~~the~~ a base-period employer voluntarily without good cause or with good cause not involving fault on the part of the base-period employer; or
- (2) ~~who~~ Who was discharged from employment by the base-period employer for misconduct.

SECTION 4. A new subdivision to subsection 2 of section 52-04-07 of the North Dakota Century Code is created and enacted as follows:

With benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual commenced work for that employer. This subdivision does not apply to an employee of a temporary help firm.

SECTION 5. AMENDMENT. Section 52-04-09 of the North Dakota Century Code is amended and reenacted as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. An employer's rate for a calendar year must be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If, when such determination is to be made, an employer has failed to file a required report or filed an insufficient report, ~~the bureau~~ job service North Dakota shall notify the employer thereof by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice,

1 the employer's rate for the following calendar year may not be less than the negative employer
2 maximum rate. ~~For employers identified as belonging to industry group number 161, highway~~
3 ~~and street construction, except elevated highways, for the effective period set forth in section~~
4 ~~52-04-05, the employer's rate for the following calendar year may not be less than the negative~~
5 ~~employer maximum rate plus one and one-half percent.~~ If, at any time, an employer has failed
6 to file a required report or filed an insufficient report, ~~the bureau~~ job service North Dakota may,
7 at any time, estimate the wage information required by the report on the basis of reasonably
8 available evidence. ~~The bureau~~ Job service North Dakota shall notify the employer of the
9 estimate by certified mail addressed to the employer's last-known address. Unless the
10 employer files the report or a sufficient report within fifteen days after the mailing of the notice,
11 the estimate becomes final for all purposes, except that if the amount of estimated wages is
12 less than the actual wages, the bureau may reconsider the estimate.

13 **SECTION 6. AMENDMENT.** Section 52-04-10 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **52-04-10. Contributions for ensuing year - Notification - Review.** The bureau shall
16 ~~notify~~ promptly notify each employer of the employer's rate of contributions as determined for
17 each ensuing year ~~not later than by the end of the first full week of December first, but not later~~
18 than December tenth, of the preceding year. Such contributions must be computed pursuant to
19 the provisions of this chapter. Such determination becomes conclusive and binding upon the
20 employer unless, within fifteen days after the mailing of the notice thereof to the employer's
21 last-known address, or in the absence of the mailing, within fifteen days after the delivery of
22 such notice, the employer files an application for review and redetermination, setting forth the
23 employer's reasons therefor. If the bureau grants such review, the employer must be notified
24 promptly thereof and must be granted an opportunity for a hearing, but no employer shall have
25 standing, in any proceeding involving the employer's rate of contributions or contribution
26 liability, to contest the chargeability to the employer's account of any benefits paid in
27 accordance with a determination, redetermination, or decision pursuant to the provisions of
28 chapter 52-06, except upon the ground that the services on the basis of which such benefits
29 were found to be chargeable did not constitute the services performed in employment for the
30 employer and only in the event that the employer was not a party to such determination,
31 redetermination, or decision or to any other proceeding under this chapter in which the

character of these services was determined. For purposes of this section, an employer was not a party to the determination if notice of the determination and the employer's right to appeal the determination was not mailed or personally delivered to the employer. The employer must be notified promptly of the bureau's denial of the employer's application, or of the bureau's redetermination, both of which become final unless within thirty days after the mailing of notice thereof to the employer's last-known address or in the absence of mailing, within thirty days after delivery of such notice, a petition for judicial review is filed in the district court of Burleigh County. Any proceeding before the court under the terms of this section must be had in accordance with the provisions in chapter 52-06 with respect to court review.

SECTION 7. AMENDMENT. Subsection 8 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

8. For the week in which the individual has filed an otherwise valid claim for benefits and:

- a. ~~Through the date and for~~ For one year from the date on which a determination is made that such individual has made a false statement for the purposes of obtaining benefits to which the individual was not lawfully entitled. Provided, however, that this disqualification does not apply to cases in which it appears to the satisfaction of the bureau job service North Dakota that the ~~said~~ false statement was made by reason of a mistake or misunderstanding of law or of facts without fraudulent intent; or
- b. For one year when the individual has been separated from the individual's last employment because of gross misconduct in connection with work.

SECTION 8. AMENDMENT. Subdivision d of subsection 2 of section 52-06-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. ~~This provision does not apply if, at the time of the claim, such ownership interest has been ceded.~~ The exceptions in subdivisions a, b, and c do not apply if, at the time of making the claim, the ownership interest described in those subdivisions has been ceded. An ownership interest is ceded within the meaning of this subdivision if:
 - (1) The appropriate official of the partnership, corporation, or limited liability company has officially filed articles of dissolution, a notice of intent to

- 1 dissolve, or a notice of termination with the secretary of state, and
2 presents proof of that filing to job service North Dakota;
- 3 (2) The appropriate official of the corporation has received a certificate of
4 dissolution from the secretary of state;
- 5 (3) The partnership, corporation, or limited liability company has sold or
6 otherwise transferred to uninvolved third parties substantially all the
7 assets of the partnership, corporation, or limited liability company with
8 an intent to end the business operation and terminate or dissolve the
9 partnership, corporation, or limited liability company. As used in this
10 subdivision, "uninvolved third parties" excludes all relatives of the
11 partners, directors, members of a board of governors, or substantial
12 stockholders or holders of a substantial membership interest in a
13 limited liability company; and excludes any corporation, limited liability
14 company, or partnership, in which the relative holds a one-fourth or
15 greater ownership interest. As used in this paragraph, "relative" means
16 the following persons whether related by blood, marriage, or adoption:
17 grandparents, parents, siblings, spouses, children, grandchildren,
18 uncles, aunts, and first cousins; or
- 19 (4) Substantially all of the assets of the partnership, corporation, or limited
20 liability company have been legally seized by creditors rendering the
21 business incapable of further operation.