

House Bill 117 (AS PASSED HOUSE AND SENATE)

By: Representatives Hamilton of the 24th, Pruett of the 149th, Fleming of the 121st, Strickland of the 111th, Kirby of the 114th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
2 employment security, so as to change certain provisions relating to employment security; to
3 modify the definition of the term "most recent employer"; to change certain provisions
4 relating to charging regular benefits paid against the experience rating account; to change
5 certain provisions relating to applications for adjustment or refund; to change certain
6 provisions relating to grounds for disqualification of benefits; to correct a cross-reference;
7 to change certain provisions relating to overpayments; to provide for related matters; to
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
12 security, is amended by revising Code Section 34-8-43, relating to most recent employer, as
13 follows:

14 "34-8-43.

15 (a) As used in this chapter and except as otherwise provided in subsection (b) of this Code
16 section, the term 'most recent employer' means, for claims with benefit years that begin on
17 or after July 1, 2015, the last employer for whom an individual worked.

18 ~~(a)~~(b) As used in this chapter and except as otherwise provided in subsection ~~(b)~~ (a) of this
19 Code section, the term 'most recent employer' means, for claims with benefit years that
20 begin on or before June 30, 2015, the last liable employer for whom an individual worked
21 and:

22 (1) The individual was separated from work for a disqualifying reason;

23 (2) The individual was released or separated from work under nondisqualifying
24 conditions and earned wages of at least ten times the weekly benefit amount of the claim;

25 or

26 (3) The employer files the claim for the individual by submitting such reports as
27 authorized by the Commissioner.

28 ~~(b) As used in this chapter, the term 'most recent employer' means, for claims with benefit~~
29 ~~years that begin on or before December 31, 1991, the last liable employer for whom an~~
30 ~~individual worked and:~~

31 ~~(1) From whom the individual was separated from work for a disqualifying reason, or~~
32 ~~(2) From whom the individual was released or separated from work under~~
33 ~~nondisqualifying conditions and earned wages equal to the lesser of \$500.00 or eight~~
34 ~~times the weekly benefit amount of the claim.~~

35 (c) Where no employer in subsection ~~(a)~~ or (b) of this Code section meets the definition
36 of most recent employer from the beginning of the base period to the date the claim is filed,
37 the last liable employer for whom the individual worked shall be considered as the most
38 recent employer for determining eligibility for benefits.

39 (d) Where periods of employment with the same liable employer fail, independently, to
40 meet the definition of most recent employer in subsection (a) or (b) of this Code section,
41 such periods of employment may be used cumulatively to determine the most recent
42 employer and eligibility for benefits shall be determined by the reason for separation from
43 the last employment with such employer."

44

SECTION 2.

45 Said chapter is further amended by revising Code Section 34-8-157, relating to charging
46 regular benefits paid against the experience rating account, as follows:

47 "34-8-157.

48 ~~(a) Regular benefits paid with respect to all benefit years that begin on or before December~~
49 ~~31, 1991, shall be charged against the experience rating account of employers in the~~
50 ~~following manner:~~

51 ~~(1) Benefits paid to an individual with respect to the individual's current benefit year~~
52 ~~shall be charged against the accounts of the individual's base period employers. Charges~~
53 ~~shall be based upon the pro rata share of wages paid to the individual during the base~~
54 ~~period. To receive relief of charges to its account, an employer shall furnish, in a timely~~
55 ~~manner, detailed and specific information as to the reason for separation from~~
56 ~~employment. If a disqualification is imposed on the claim and the employer has properly~~
57 ~~submitted its information, the account shall be relieved of charges;~~

58 ~~(2) When the most recent employer, as that term is defined in Code Section 34-8-43, is~~
59 ~~not a base period employer, a determination shall be made with respect to potential future~~
60 ~~charges in the event a second benefit year claim is filed. If an individual files a valid~~
61 ~~claim for unemployment compensation for a second benefit year and is paid~~

62 ~~unemployment compensation, then those benefits will be charged or relieved against the~~
 63 ~~experience rating account of such employer as provided in this Code section;~~

64 ~~(3) An employer who provided timely response to the department as specified in the~~
 65 ~~regulations of the department may receive relief of charges for benefits paid to an~~
 66 ~~individual under any of the following circumstances:~~

67 ~~(A) An employer subject to benefit charges offers otherwise suitable work to the~~
 68 ~~individual and the job is refused solely because the individual has moved his or her~~
 69 ~~place of residence too far to commute to the job location. The employer must provide~~
 70 ~~timely notice to the Commissioner of the job offer as provided by regulations of the~~
 71 ~~Commissioner; or~~

72 ~~(B) The individual earned base period wages for part-time employment from an~~
 73 ~~employer who:~~

74 ~~(i) Is an interested party because of the individual's loss of other employment;~~

75 ~~(ii) Has provided base period employment and continues to provide employment to~~
 76 ~~the same extent as that part-time employment was provided in the base period of the~~
 77 ~~individual; and~~

78 ~~(iii) Has furnished timely information pursuant to the regulations of the~~
 79 ~~Commissioner; and~~

80 ~~(4) Notwithstanding paragraphs (1) through (3) of this subsection, any employer who has~~
 81 ~~elected to make payments in lieu of contributions is not subject to relief of charges for~~
 82 ~~benefits paid with respect to all benefit years that begin on or before December 31, 1991.~~

83 ~~(b)(a)~~ Regular benefits paid with respect to all benefit years that begin on or after
 84 January 1, 1992, but prior to July 1, 2015, shall be charged against the experience rating
 85 account or reimbursement account of employers in the following manner:

86 (1) Benefits paid shall be charged to the account of the most recent employer, as that
 87 term is defined in Code Section 34-8-43, including benefits paid based upon insured
 88 wages which were earned to requalify following a period of disqualification as provided
 89 in Code Section 34-8-194;

90 (2)(A) Except as otherwise provided in paragraph (3) of this subsection, benefits
 91 charged to the account of an employer shall not exceed the amount of wages paid by
 92 such employer during the period beginning with the base period of the individual's
 93 claim and continuing through the individual's benefit year.

94 ~~(B) In the event the provisions of subparagraph (A) of this paragraph are determined~~
 95 ~~by the United States secretary of labor or by a court of competent jurisdiction at a~~
 96 ~~subsequent level of appeal, such appeal to be taken at the sole discretion of the~~
 97 ~~Commissioner, to be out of conformity with federal law, the provisions of subparagraph~~
 98 ~~(A) of this paragraph shall be considered null and void and the provisions of this~~

99 ~~subparagraph shall control. Benefits charged to the account of an employer shall not~~
 100 ~~exceed the amount of wages paid by such employer during the period beginning with~~
 101 ~~the base period of the individual's claim and continuing through the individual's benefit~~
 102 ~~year; provided, however, the portion of such charges for benefits paid which exceed the~~
 103 ~~amount of wages paid by such employer shall be charged against the experience rating~~
 104 ~~account of all base period employers in the manner provided in subsection (a) of this~~
 105 ~~Code section.~~

106 ~~(C)~~(B) Except as otherwise provided in paragraph (3) of this subsection, benefits shall
 107 not be charged to the account of an employer when an individual's overpayment is
 108 waived pursuant to Code Section 34-8-254.

109 ~~(D)~~(C) Except as otherwise provided in paragraph (3) of this subsection, for the
 110 purposes of calculating an employer's contribution rate, an account of an employer shall
 111 not be charged for benefits paid to an individual for unemployment that is directly
 112 caused by a presidentially declared natural disaster;

113 (3)(A) An employer shall respond in a timely and adequate manner to a notice of a
 114 claim filing or a written request by the department for information relating to a claim
 115 for benefits as specified in the rules or regulations prescribed by the Commissioner.

116 (B) Any violation of subparagraph (A) of this paragraph by an employer or an officer
 117 or agent of an employer absent good cause may result in the employer's account being
 118 charged for overpayment of benefits paid due to such violation even if the
 119 determination is later reversed; provided, however, that upon the finding of three
 120 violations of subparagraph (A) of this paragraph within a calendar year resulting in an
 121 overpayment of benefits, an employer's account shall be charged for any additional
 122 overpayment and shall not be relieved of such charges unless good cause is shown; and

123 (4) Benefits paid to individuals shall be charged against the Unemployment Trust Fund
 124 when benefits are paid but not charged against an employer's experience rating account
 125 as provided in this Code section.

126 (b)(1) Regular benefits paid with respect to all benefit years that begin on or after
 127 July 1, 2015, shall be charged against the experience rating account or reimbursement
 128 account of the most recent employer as defined in subsection (a) of Code
 129 Section 34-8-43, provided that:

130 (A) The most recent employer is a liable employer, as provided in Code
 131 Section 34-8-42; and

132 (B)(i) The most recent employer separated the individual from work under
 133 nondisqualifying conditions, or files the claim for the individual by submitting such
 134 reports as authorized by the Commissioner; or

135 (ii) The individual separated from the most recent employer under nondisqualifying
 136 conditions.

137 (2) Regular benefits to be charged against the experience rating account or
 138 reimbursement account of the most recent employer pursuant to paragraph (1) of this
 139 subsection shall be charged in the following manner:

140 (A) Benefits paid shall be charged to the account of the most recent employer as
 141 defined in Code Section 34-8-43, including those benefits paid based upon insured
 142 wages which were earned to requalify following a period of disqualification as provided
 143 in Code Section 34-8-194;

144 (B) Except as otherwise provided in subparagraph (E) of this paragraph, benefits
 145 charged to the account of an employer shall not exceed the amount of wages paid by
 146 such employer during the period beginning with the base period of the individual's
 147 claim and continuing through the individual's benefit year;

148 (C) Except as otherwise provided in subparagraph (E) of this paragraph, benefits shall
 149 not be charged to the account of an employer when an individual's overpayment is
 150 waived pursuant to Code Section 34-8-254;

151 (D) Except as otherwise provided in subparagraph (E) of this paragraph, for the
 152 purposes of calculating an employer's contribution rate, an account of an employer shall
 153 not be charged for benefits paid to an individual for unemployment that is directly
 154 caused by a presidentially declared natural disaster;

155 (E)(i) An employer shall respond in a timely and adequate manner to a notice of a
 156 claim filing or a written request by the department for information relating to a claim
 157 for benefits as specified in the rules or regulations prescribed by the Commissioner.

158 (ii) Any violation of division (i) of this subparagraph by an employer or an officer or
 159 agent of an employer absent good cause may result in the employer's account being
 160 charged for overpayment of benefits paid due to such violation even if the
 161 determination is later reversed; provided, however, that upon the finding of three
 162 violations of division (i) of this subparagraph within a calendar year resulting in an
 163 overpayment of benefits, an employer's account shall be charged for any additional
 164 overpayment and shall not be relieved of such charges unless good cause is shown;
 165 and

166 (F) Benefits paid to individuals shall be charged against the Unemployment Trust Fund
 167 when benefits are paid but not charged against an employer's experience rating account
 168 as provided in this Code section or when the employer is not a liable employer as
 169 provided in Code Section 34-8-42.

170 (c)(1) Payments of extended benefits as provided in Code Section 34-8-197 shall be
 171 charged to an employer's experience rating account in the same proportion as regular

172 benefits are charged, except an employer shall be charged for only 50 percent of its
173 portion of the extended benefits paid for all weeks after the first week of extended
174 benefits; provided, however, that benefits paid that are attributable to service in the
175 employ of any governmental entity as described in subsection (h) of Code
176 Section 34-8-35 shall be financed in their entirety by such governmental entity which is
177 charged as provided in this Code section.

178 (2) As provided by 26 U.S.C. Section 3304, only 50 percent of extended benefits paid
179 shall be charged to the individual's employers as described in paragraph (1) of this
180 subsection. However, if the federal government does not reimburse the 50 percent for the
181 first week of extended benefits paid, employers shall be charged 100 percent of such first
182 week of extended benefits paid. When employers have been determined to be relieved
183 from charges, such payments shall be charged against the Unemployment Trust Fund in
184 the appropriate amount.

185 (d) The Commissioner shall by regulation provide for the notification of each employer
186 of charges made against its account at intervals not less frequent than semiannually. The
187 charges in such notification shall be binding upon each employer for all purposes unless
188 the employer files a request for review and redetermination in writing. Such request must
189 set forth the charges to which the employer objects and the basis of the objection. The
190 request must be made within 15 days of the prescribed notification. Upon such request
191 being filed, the employer shall be granted an opportunity for a fair hearing. However, no
192 employer shall have standing in any proceeding to contest the chargeability to its account
193 of any benefit paid in accordance with a determination, redetermination, or decision
194 pursuant to Articles 7 and 8 of this chapter, except upon the ground that the services upon
195 which such benefits were found to be chargeable did not constitute services performed in
196 employment for the employer and only in the event that the employer was not a party to
197 such determination, redetermination, or decision, or to any other proceedings under this
198 chapter in which the character of such services was determined. The employer shall be
199 promptly notified of the Commissioner's redetermination. The redetermination shall
200 become final unless a petition for judicial review is filed within 15 days after notice of
201 redetermination. Such notice shall be mailed or otherwise delivered to the employer's last
202 known address. The petition for judicial review shall be filed in the Superior Court of
203 Fulton County or in the superior court of the county of residence of the petitioner. In any
204 proceeding under this Code section, the findings of the Commissioner as to the facts, if
205 supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction
206 of the court shall be confined to questions of law. No additional evidence shall be received
207 by the court, but the court may order additional evidence to be taken before the
208 Commissioner. The Commissioner may, after hearing such additional evidence, modify

209 the determination and file such modified determination, together with a transcript of the
 210 additional record, with the court. Such proceedings shall be heard in a summary manner
 211 and shall be given precedence over all other civil cases except cases arising under
 212 Articles 7 and 8 of this chapter and Chapter 9 of this title. An appeal may be taken from
 213 the decision of the Superior Court of Fulton County or the superior court of the county of
 214 residence of the petitioner to the Court of Appeals of Georgia in the same manner as is
 215 provided in civil cases."

216 **SECTION 3.**

217 Said chapter is further amended by revising Code Section 34-8-164, relating to applications
 218 for adjustment or refund, as follows:

219 "34-8-164.

220 Applications for an adjustment or a refund of contributions, payments in lieu of
 221 contributions, or interest thereon, shall be submitted no later than three years from the date
 222 such amounts were assessed. Applications must be in writing. The Commissioner shall
 223 determine what amounts, if any, were erroneously collected. Adjustments shall be made
 224 against subsequent payments. Refunds will be issued, without interest thereon, when
 225 adjustments cannot be made. At the option of the Commissioner, the Commissioner may
 226 ~~initiate~~ make any adjustments or refunds deemed appropriate for any amounts erroneously
 227 collected where no written request for a refund or an adjustment has been received,
 228 provided such amounts were assessed within the last ~~three~~ seven years. Amounts shall be
 229 refunded from the fund into which they were deposited."

230 **SECTION 4.**

231 Said chapter is further amended by revising paragraph (1) of Code Section 34-8-194, relating
 232 to grounds for disqualification of benefits, as follows:

233 "(1)(~~A~~) For the week or fraction thereof in which the individual has filed an otherwise
 234 valid claim for benefits after such individual has left the most recent employer
 235 voluntarily without good cause in connection with the individual's most recent work.
 236 (~~B~~) Good cause in connection with the individual's most recent work shall be
 237 determined by the Commissioner according to the circumstances in the case; provided,
 238 however, that the following circumstances shall be deemed to establish such good cause
 239 and the employer's account shall not be charged for any benefits paid out to an
 240 individual who leaves an employer:

241 (i) To leaving an employer to accompany a spouse who has been reassigned from one
 242 military assignment to another shall be deemed to be for good cause; provided,
 243 however, that the employer's account shall not be charged for any benefits paid out

244 ~~to the person who leaves to accompany a spouse reassigned from one military~~
 245 ~~assignment to another.; or~~

246 (ii) Due to family violence verified by reasonable documentation demonstrating that:

247 (I) Leaving the employer was a condition of receiving services from a family
 248 violence shelter;

249 (II) Leaving the employer was a condition of receiving shelter as a resident of a
 250 family violence shelter; or

251 (III) Such family violence caused the individual to reasonably believe that the
 252 claimant's continued employment would jeopardize the safety of the claimant or the
 253 safety of any member of the claimant's immediate family.

254 For purposes of this subparagraph, the term 'family violence' shall have the same
 255 meaning as in Code Section 19-13-1 and the term 'family violence shelter' shall have
 256 the same meaning as in Code Section 19-13-20.

257 (C) To requalify following a disqualification, an individual must secure subsequent
 258 employment for which the individual earns insured wages equal to at least ten times the
 259 weekly benefit amount of the claim and then becomes unemployed through no fault on
 260 the part of the individual.

261 ~~(D) Notwithstanding the foregoing, in the Commissioner's determination the~~ When
 262 voluntarily leaving an employer, the ~~burden of proof of good work connected cause for~~
 263 ~~voluntarily leaving such work~~ in connection with the individual's most recent work
 264 shall be on the individual.

265 (E) Benefits shall not be denied under this paragraph, however, to an individual for
 266 separation from employment pursuant to a labor management contract or agreement or
 267 pursuant to an established employer plan, program, policy, layoff, or recall which
 268 permits the individual, because of lack of work, to accept a separation from
 269 employment;"

270 SECTION 5.

271 Said chapter is further amended by revising paragraph (1) of Code Section 34-8-159, relating
 272 to specific provisions for payments in lieu of contributions, as follows:

273 "(1) **Date payment due.** Upon approval by the Commissioner, at the end of each
 274 calendar quarter or at the end of such other period as determined by the Commissioner,
 275 each organization or group of organizations shall be billed for payments in lieu of
 276 contributions charged to it during such quarter or other prescribed period in accordance
 277 with Code Section 34-8-158. Provisions applicable to contributing employers in
 278 subsection (a) of Code Section 34-8-157 under which employers may not be charged do
 279 not apply to employers who make payments in lieu of contributions;"

280 **SECTION 6.**

281 Said chapter is further amended by revising Code Section 34-8-254, relating to
282 overpayments, by adding a new subsection to read as follows:

283 "(e) Any action to recover an overpayment shall be brought by the Commissioner or an
284 authorized representative of the Commissioner within seven years from the release date of
285 the notice of determination and overpayment by the department."

286 **SECTION 7.**

287 This Act shall become effective upon its approval by the Governor or upon its becoming law
288 without such approval.

289 **SECTION 8.**

290 All laws and parts of laws in conflict with this Act are repealed.