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LABOR AND INDUSTRIAL RELATIONS

Employment Security: Extend Period for Employer Contribution Rates; Provide for Admissibility of Drug Tests; Deny Benefits to Individuals Discharged for Drug-Free Workplace Violations; Require Claimants Filing for Unemployment to be Advised of the Tax Consequences of Filing for Benefits

CODE SECTIONS: O.C.G.A. §§ 34-8-151, -155, -178, -194 to -195 (amended)

BILL NUMBER: HB 1270

ACT NUMBER: 818

GEORGIA LAWS: 1996 Ga. Laws 693

SUMMARY: The Act extends the period during which certain employers' unemployment contribution rates shall be in effect under the Employment Security Law from 1996 to 2001. The Act also limits the time an employer is allowed to make voluntary contributions to the unemployment fund to 120 days. Additionally, the Act provides that under certain circumstances, an employee who has been discharged or suspended for a violation of his or her employer's drug-free workplace policy shall be denied unemployment benefits. The Act provides for the admissibility and authentication of laboratory test results submitted by an individual with respect to an alleged violation of an employer's drug-free workplace policy. The Act further establishes that an individual applying for a new claim for unemployment compensation shall be advised of the tax consequences and other information regarding deductions and withholding amounts.

EFFECTIVE DATE: July 1, 1996

History

Georgia's Employment Security Law¹ requires private employers to make periodic contributions to a state trust fund that is used to finance the administration of the Georgia Department of Labor (DOL).² Out of

1. 1991 Ga. Laws 139 (codified at O.C.G.A. §§ 34-8-1 to -195 (1992)).

2. *Id.*; Telephone Interview with Rep. Bob Lane, House District No. 146 (May 18,

this fund, which in 1995 totaled nearly twelve million dollars, the DOL upgrades its offices and runs its programs.³ There is an offsetting decrease in tax to the employer for the amount contributed to the fund.⁴ To ensure periodic review, the law is designed to expire at a predetermined date.⁵ In 1995, the Georgia General Assembly extended the date, which was to expire in 1996, to 2001.⁶ However, due to an administrative oversight, it failed to extend the date of the corresponding tax rate tables.⁷

Additionally, employers around the state complained about certain sections of the Employment Security Law.⁸ Specifically, employers were unhappy about spending large sums of money to prove an employee had violated a drug-free workplace policy.⁹ Discharging an employee in violation of this policy could lead to large legal expenses to authenticate the results of a laboratory drug test and to defend the results on appeal.¹⁰ Thus, employers sought a more efficient method of authenticating these tests.¹¹ Further, many employers also found it inconsistent for the state to promote a drug-free work environment while simultaneously granting unemployment benefits to individuals released from employment for drug use.¹²

The DOL also received several mandates from the Federal Department of Labor to make changes in Georgia law.¹³ Reacting to these mandates, the DOL requested the General Assembly adopt laws (1) providing that individuals who file a new claim for unemployment benefits be advised of tax information and (2) limiting the time within which employers may make voluntary payments to Georgia's unemployment fund to 120 days after the beginning of the year.¹⁴

1996) [hereinafter Lane Interview].

3. Telephone Interview with Marti Fullerton, Deputy Commissioner of the Georgia Department of Labor (May 22, 1996) [hereinafter Fullerton Interview].

4. *Id.*

5. *Id.*

6. *Id.*; see 1995 Ga. Laws 373, § 5, at 377.

7. Letter from Walt Adams, Chief of Unemployment Insurance Legal Section of the Georgia Department of Labor (Oct. 25, 1996) [hereinafter Adams Letter] (available in Georgia State University College of Law Library).

8. Fullerton Interview, *supra* note 3.

9. *Id.*

10. *Id.*

11. *Id.*

12. Lane Interview, *supra* note 2.

13. Telephone Interview with Walt Adams, Chief of Unemployment Insurance Legal Section of the Georgia Department of Labor (June 22, 1996) [hereinafter Adams Interview]; Fullerton Interview, *supra* note 3.

14. Adams Interview, *supra* note 13; Fullerton Interview, *supra* note 3.

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The Act amends the Employment Security Law by revising Code sections 34-8-151 and -155 to extend their effectiveness to the year 2001.¹⁵ It further modifies Code section 34-8-178 by limiting the time period within which employers may make voluntary contributions under the Employment Security Law.¹⁶ Additionally, the Act establishes that an individual discharged for a violation of an employer's drug-free workplace program will not be entitled to benefits under the Employment Security Law and establishes the admissibility of evidence in proving the violation of the drug-free program.¹⁷ Finally, the Act mandates that individuals filing an employment compensation claim be advised of the tax treatment and consequences of making a claim for benefits.¹⁸

Extension of Effectiveness Date of Employment Security Law

The DOL uses funding from an employer tax to run its programs and maintain its offices.¹⁹ To ensure periodic review, the Employment Security Law was not established as an indefinite tax, but rather was enacted with a sunset clause that terminates the effectiveness of the law on a specified date.²⁰ In 1995, the General Assembly extended the effectiveness of many of the laws that had 1996 termination dates, but due to an oversight, failed to extend the cross-references in the tax rate tables in the Employment Security Law.²¹ Because the General Assembly wanted private employers to continue contributing to the unemployment fund, there was a need to extend the sunset date to the year 2001.²² The Act amends Code sections 34-8-151 and -155 by changing the effective date of the existing provisions from 1996 to 2001.²³ Before 2001, the Act may be amended again to extend its effectiveness.²⁴

15. O.C.G.A. § 34-8-151, -155(c), (d) (Supp. 1996).

16. *Id.* § 34-8-178.

17. *Id.* § 34-8-194(2)(C).

18. *Id.* § 34-8-195(f).

19. Fullerton Interview, *supra* note 3.

20. Lane Interview, *supra* note 2.

21. *Id.*; Fullerton Interview, *supra* note 3; Adams Letter, *supra* note 7.

22. Fullerton Interview, *supra* note 3; Lane Interview, *supra* note 2.

23. Compare O.C.G.A. §§ 34-8-151, -155 (Supp. 1996) with 1991 Ga. Laws 139, § 1, at 189, 192 (formerly found at O.C.G.A. §§ 34-8-151, -155 (1992)).

24. Lane Interview, *supra* note 2.

Voluntary Payments

Under Georgia's Employment Security Law, an employer may make voluntary payments in addition to the contributions required and have these contributions credited to the employer's account.²⁵ If made within certain parameters, these voluntary payments can result in a reduced tax rate for the employer.²⁶ Georgia is one of approximately twenty-four states allowing employers with high tax rates to make voluntary contributions to reduce their tax rates.²⁷ The Act amends the Code by providing that an employer cannot make a voluntary payment later than 120 days after the beginning of the year in which the rate the employer must pay becomes effective.²⁸

The impetus for this change was the United States Department of Labor's insistence that Georgia formally comply with requirements under the Federal Unemployment Tax Act (FUTA).²⁹ After the General Assembly adopted the provision for voluntary payments,³⁰ a copy of the new law was sent to the United States Department of Labor for its review.³¹ After inspection, the United States Department of Labor requested that Georgia amend its law to conform to FUTA's requirements.³² Prior to this Act, Georgia had the 120-day limit established as a policy, but the United States Department of Labor requested the formal adoption of the 120-day limit in order that Georgia law strictly comply with FUTA requirements.³³ The DOL contacted the sponsor of this bill, Representative Bob Lane, and requested the amendment.³⁴ Representative Lane introduced the requested language and encountered no opposition.³⁵

25. See O.C.G.A. § 34-8-178 (Supp. 1996); 1995 Ga. Laws 373, §4, at 376 (formerly found at O.C.G.A. § 34-8-178 (Supp. 1995)).

26. See O.C.G.A. § 34-8-178 (Supp. 1996); 1995 Ga. Laws 313, § 4, at 376 (formerly found at O.C.G.A. § 34-8-178 (Supp. 1995)).

27. Fullerton Interview, *supra* note 3.

28. O.C.G.A. § 34-8-178 (Supp. 1996).

29. Adams Interview, *supra* note 13; Fullerton Interview, *supra* note 3; see 26 U.S.C. § 3301 (Supp. 1996). Under FUTA, an employer has a 6.2% tax rate for which he can receive a 5.4% credit. 26 U.S.C. § 3301 (Supp. 1996). However, to be eligible for this credit, the employer must (1) pay state unemployment tax and (2) meet federal requirements. *Id.* § 3302; Adams Interview, *supra* note 13.

30. See 1995 Ga. Laws 373, § 4, at 376 (formerly found at O.C.G.A. § 34-8-178 (Supp. 1995)).

31. Adams Interview, *supra* note 13.

32. *Id.*

33. *Id.*

34. Lane Interview, *supra* note 2.

35. *Id.*; see HB 1270, as introduced, 1996 Ga. Gen. Assem.

Drug-Free Workplace Violations

In certain circumstances, an individual terminated from employment may not be qualified to receive unemployment benefits.³⁶ For example, leaving employment voluntarily and without good cause may be grounds for disqualification.³⁷ Under this Act, an individual discharged or suspended for a violation of the employer's drug-free workplace policy may also be disqualified from unemployment benefits.³⁸ The employer will have the burden of proving just discharge and will presumptively meet this burden if the individual fails a drug screening test required by a drug-free policy.³⁹ Positive laboratory test results "shall create a rebuttable presumption that the individual violated the employer's drug-free workplace policy."⁴⁰

The purpose of this section was to create consistency in state policies and was not a reaction to any particular case.⁴¹ The General Assembly wanted to discourage the use of drugs and did not wish to compensate those who were fired from their employment because of drug use.⁴² Representative Lane believed it inconsistent to allow an employee to be terminated for drug use and then pay the same individual via unemployment compensation.⁴³

This section further adds language providing for self-authentication of laboratory test results submitted by the employer.⁴⁴ Private employers from all sections of the state had complained to the DOL about the difficulty of meeting the requirements of proving a drug-related discharge.⁴⁵ The expenses required to hire an attorney for an appeal and to subpoena the person who performed the scientific test necessary to authenticate laboratory tests were viewed as too demanding and excessive.⁴⁶ The General Assembly intended to make it easier for an employer to prove a drug-related discharge.⁴⁷ The Act incorporates language added in the House Committee on Industrial Relations that allows self-authentication of laboratory results

36. 1991 Ga. Laws 139, § 1, at 230-32 (codified at O.C.G.A. § 34-8-194 (1992)).

37. *Id.* (codified at O.C.G.A. § 34-8-194(1) (1992)).

38. O.C.G.A. § 34-8-194(2)(C) (Supp. 1996). To requalify, an individual must "secure subsequent employment for which the individual earns insured wages equal to at least ten times the weekly benefit amount of the claim and then become unemployed through no fault on the part of the individual." *Id.*

39. *Id.*

40. *Id.*

41. Lane Interview, *supra* note 2.

42. *Id.*; Fullerton Interview, *supra* note 3.

43. Fullerton Interview, *supra* note 3; Lane Interview, *supra* note 2.

44. O.C.G.A. § 34-8-194(2)(C)(ii) (Supp. 1996).

45. Fullerton Interview, *supra* note 3.

46. *Id.*

47. *Id.*; Lane Interview, *supra* note 2.

submitted by the employee.⁴⁸ This addition was the result of a compromise and the "need to be fair to the employee as much as to management."⁴⁹

Unemployment Benefits Eligibility

The Act requires that certain information be relayed to the applicant when an unemployment compensation claim is filed.⁵⁰ This language, which involves the tax consequences of filing an unemployment claim,⁵¹ was added as a result of a federal mandate.⁵² The Act changes the law by allowing an individual receiving unemployment benefits to have federal and state income tax withheld from his or her unemployment compensation payment.⁵³ Although the General Assembly had the option of creating a local withholding tax as well, the

48. O.C.G.A. § 34-8-194(2)(C)(iii) (Supp. 1996).

49. Lane Interview, *supra* note 2.

50. O.C.G.A. § 34-8-195(f) (Supp. 1996). The Act provides:

(1) An individual who files a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to federal and state income tax;

(B) Requirements exist pertaining to estimated tax payments;

(C) An individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation in the amount specified in the United States Internal Revenue Code of 1986;

(D) An individual may elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of 6 percent; and

(E) An individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal or state taxing authority as payment of income tax;

(3) The Commissioner may follow procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of income tax;

(4) Amounts shall be deducted and withheld under this Code section only after amounts have been deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp over issuances, or other purposes as required under this chapter.

Id.

51. *See id.*

52. Adams Interview, *supra* note 13. Mr. Adams expressed concern that requiring states to inform individuals of federal rights could be an unfunded mandate because of the potential considerable expense of changing printed forms and computer databases. *Id.*

53. O.C.G.A. § 34-8-195(f)(1)(C), (D) (Supp. 1996).

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DOL decided this clause was not necessary because most localities do not impose a separate tax on unemployment benefits.⁵⁴

J. Parker Gilbert

54. Adams Interview, *supra* note 13.