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HOUSE BILL 253

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING THE
UNEMPLOYMENT COMPENSATION LAW TO DISCONTINUE THE TEMPORARY
INCREASE IN THE WEEKLY BENEFIT AMOUNT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-4 NMSA 1978 (being Laws 2003,
Chapter 47, Section 8, as amended) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT
GENERALLY.--

A. All benefits provided herein are payable from
the unemployment compensation fund. All benefits shall be paid
in accordance with rules prescribed by the secretary through
employment offices or other agencies as the secretary approves
by general rule.

B. Weekly benefits shall be as follows:

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1 (1) [~~except as provided in Paragraph (2) of~~
2 ~~this subsection~~] an individual's "weekly benefit amount" is an
3 amount equal to fifty-three and one-half percent of the average
4 weekly wage for insured work paid to the individual in that
5 quarter of the individual's base period in which total wages
6 were highest. No benefit as so computed may be less than ten
7 percent or more than fifty-three and one-half percent of the
8 state's average weekly wage for all insured work. The state's
9 average weekly wage shall be computed from all wages reported
10 to the department from employing units in accordance with rules
11 of the secretary for the period ending June 30 of each calendar
12 year divided by the total number of covered employees divided
13 by fifty-two, effective for the benefit years commencing on or
14 after the first Sunday of the following calendar year. An
15 individual is not eligible to receive benefits unless the
16 individual has wages in at least two quarters of that
17 individual's base period. For the purposes of this subsection,
18 "total wages" means all remuneration for insured work,
19 including commissions and bonuses and the cash value of all
20 remuneration in a medium other than cash;

21 [~~(2) from July 1, 2009 through June 30, 2011,~~
22 ~~an individual's "weekly benefit amount" shall be an amount~~
23 ~~equal to sixty percent of the average weekly wage for insured~~
24 ~~work paid to the individual in that quarter of the individual's~~
25 ~~base period in which total wages were highest, and no benefit~~

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1 ~~as so computed may be less than ten percent or more than sixty~~
2 ~~percent of the state's average weekly wage for all insured~~
3 ~~work;~~

4 ~~(3)]~~ (2) an eligible individual who is
5 unemployed in any week during which the individual is in a
6 continued claims status shall be paid, with respect to the
7 week, a benefit in an amount equal to the individual's weekly
8 benefit amount, less that part of the wages, if any, or
9 earnings from self-employment, payable to the individual with
10 respect to such week that is in excess of one-fifth of the
11 individual's weekly benefit amount. For purposes of this
12 subsection only, "wages" includes all remuneration for services
13 actually performed in a week for which benefits are claimed,
14 vacation pay for a period for which the individual has a
15 definite return-to-work date, wages in lieu of notice and back
16 pay for loss of employment but does not include payments
17 through a court for time spent in jury service;

18 ~~[(4)]~~ (3) notwithstanding any other provision
19 of this section, an eligible individual who, pursuant to a plan
20 financed in whole or in part by a base-period employer of the
21 individual, is receiving a governmental or other pension,
22 retirement pay, annuity or any other similar periodic payment
23 that is based on the previous work of the individual and who is
24 unemployed with respect to any week ending subsequent to April
25 9, 1981 shall be paid with respect to the week, in accordance

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1 with rules prescribed by the secretary, compensation equal to
2 the individual's weekly benefit amount reduced, but not below
3 zero, by the prorated amount of the pension, retirement pay,
4 annuity or other similar periodic payment that exceeds the
5 percentage contributed to the plan by the eligible individual.
6 The maximum benefit amount payable to the eligible individual
7 shall be an amount not more than twenty-six times the
8 individual's reduced weekly benefit amount. If payments
9 referred to in this section are being received by an individual
10 under the federal Social Security Act, the division shall take
11 into account the individual's contribution and make no
12 reduction in the weekly benefit amount;

13 ~~[(5)]~~ (4) in the case of a lump-sum payment of
14 a pension, retirement or retired pay, annuity or other similar
15 payment by a base-period employer that is based on the previous
16 work of the individual, the payment shall be allocated, in
17 accordance with rules prescribed by the secretary, and shall
18 reduce the amount of unemployment compensation paid, but not
19 below zero, in accordance with Paragraph ~~[(4)]~~ (3) of this
20 subsection; and

21 ~~[(6)]~~ (5) the retroactive payment of a
22 pension, retirement or retired pay, annuity or any other
23 similar periodic payment as provided in Paragraphs ~~[(4)]~~ (3)
24 and ~~[(5)]~~ (4) of this subsection attributable to weeks during
25 which an individual has claimed or has been paid unemployment

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1 compensation shall be allocated to those weeks and shall reduce
2 the amount of unemployment compensation for those weeks, but
3 not below zero, by an amount equal to the prorated amount of
4 the pension. Any overpayment of unemployment compensation
5 benefits resulting from the application of the provisions of
6 this paragraph shall be recovered from the claimant in
7 accordance with the provisions of Section 51-1-38 NMSA 1978.

8 C. An individual otherwise eligible for benefits
9 shall be paid for each week of unemployment, in addition to the
10 amount payable under Subsection B of this section, the sum of
11 twenty-five dollars (\$25.00) for each unemancipated child under
12 the age of eighteen, up to a maximum of four and subject to the
13 maximum stated in Subsection D of this section, of the
14 individual who is in fact dependent upon and wholly or mainly
15 supported by the individual, including:

16 (1) a child in the individual's custody
17 pending the adjudication of a petition filed by the individual
18 for the adoption of the child in a court of competent
19 jurisdiction; or

20 (2) a child for whom the individual, under a
21 decree or order from a court of competent jurisdiction, is
22 required to contribute to the child's support and for whom no
23 other person is receiving allowances under the Unemployment
24 Compensation Law if the child is domiciled within the United
25 States or its territories or possessions, the payment to be

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1 withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

2 D. Dependency benefits shall not exceed fifty
3 percent of the individual's weekly benefit rate. The amount of
4 dependency benefits determined as of the beginning of an
5 individual's benefit year shall not be reduced for the duration
6 of the benefit year, but this provision does not prevent the
7 transfer of dependents' benefits from one spouse to another in
8 accordance with this subsection. If both the husband and wife
9 receive benefits with respect to a week of unemployment, only
10 one of them is entitled to a dependency allowance with respect
11 to a child. The division shall prescribe standards as to who
12 may receive a dependency allowance when both the husband and
13 wife are eligible to receive unemployment compensation
14 benefits. Dependency benefits shall not be paid unless the
15 individual submits documentation satisfactory to the division
16 establishing the existence of the claimed dependent. If the
17 provisions of this subsection are satisfied, an otherwise
18 eligible individual who has been appointed guardian of a
19 dependent child by a court of competent jurisdiction shall be
20 paid dependency benefits.

21 E. An otherwise eligible individual is entitled
22 during any benefit year to a total amount of benefits equal to
23 whichever is the lesser of twenty-six times the individual's
24 weekly benefit amount, plus any dependency benefit amount
25 pursuant to Subsections C and D of this section, or sixty

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1 percent of the individual's wages for insured work paid during
2 the individual's base period.

3 F. A benefit as determined in Subsection B or C of
4 this section, if not a multiple of one dollar (\$1.00), shall be
5 rounded to the next lower multiple of one dollar (\$1.00).

6 G. The secretary may prescribe rules to provide for
7 the payment of benefits that are due and payable to the legal
8 representative, dependents, relatives or next of kin of
9 claimants since deceased. These rules need not conform with
10 the laws governing successions, and the payment shall be deemed
11 a valid payment to the same extent as if made under a formal
12 administration of the succession of the claimant.

13 H. The division, on its own initiative, may
14 reconsider a monetary determination whenever it is determined
15 that an error in computation or identity has occurred or that
16 wages of the claimant pertinent to such determination but not
17 considered have been newly discovered or that the benefits have
18 been allowed or denied on the basis of misrepresentation of
19 fact, but no redetermination shall be made after one year from
20 the date of the original monetary determination. Notice of a
21 redetermination shall be given to all interested parties and
22 shall be subject to an appeal in the same manner as the
23 original determination. In the event that an appeal involving
24 an original monetary determination is pending at the time a
25 redetermination is issued, the appeal, unless withdrawn, shall

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be treated as an appeal from redetermination."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.