

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

Interoffice Communication

Date: April 23, 1982
TO: Holders of Interpretation Manual
FROM: Glenn R. Jernigan, Chairman
SUBJECT: Interpretation No. 255

In accordance with Interpretation No. 252, the attached Interpretation No. 255 has been adopted as an official Interpretation by the Commission and shall be distributed to all holders of the Interpretations.

Any questions about this Interpretation should be directed to the office of the Chief Counsel at (919) 733-4636.

Attachment

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 255

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Payments Made to Claimants

Shortly after In Re Tyson, 253 N.C. 622, 117 S.E.2d 854 (1961), ruled that separated employees, who are entitled to severance and vacation pay, are not entitled to unemployment benefits until the monies paid as severance and vacation pay have been exhausted by time elapsed at the employee's weekly wage rate, Interpretation No. 182 was issued. Thereafter, Interpretation No. 203 was issued which updated No. 182. In order to make the Commission's application of the law in this area current, this Interpretation is being issued.

The basic definition of "wages" is contained in G.S. 96-8(12), (13)a., and b. By these definitions, "wages" means all remuneration for services from whatever source, including commissions and bonuses, and the cash value of all remuneration in any media other than cash. Regulations 1.25, 1.26, and 1.27 also contain references to "wages" but basically do not add or detract from the substance of the definitions contained in Chapter 96. In determining whether certain payments are "wages", the determination should include, as a general rule, the same treatment of monies paid for purposes of contributions and purposes of claims. In other words, monies paid cannot be wages for purposes of contributions and not earnings for purposes of claims. Any monies paid to persons out of an employer/employee relationship which are required to be reported as income to the Internal Revenue Service, the North Carolina Department of Revenue, or the Commission shall be considered as earnings for unemployment benefit claims. If the monies paid are attributable to particular weeks, for claims purposes, they should be considered earnings for those weeks. If the earnings are not directly attributable by the employer to certain weeks, they normally should be considered earnings only for the week received unless they fit the Tyson situation and G.S. 96-(10)c. In either case, earnings are taxable only in the calendar quarter in which they are paid.

Although retirement or other similar payments clearly are not "wages" due to specific wording in the definitions, G.S. 96-14(9) modifies the preceding general rule because of its specific wording and requires an effect on claims. Also, Supplemental Unemployment Benefits will not be counted as wages for contribution purposes or earnings for benefit purposes. Bonuses, longevity pay, and other similar types of payments will be counted as wages and earnings.

If a claimant is to receive a payment as contemplated by the Tyson case, but the payment will be made at some future date not associated with the separation date, the payment will be considered attributable to weeks including and immediately following the date on which the payment is actually made rather than to the weeks immediately following the date of separation. Here again, such sums are taxable in the quarter in which they are paid.

Adopted as an official Interpretation by the Commission on April 19, 1982.