

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

**INTERPRETATION NO. 261**

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Leaves of Absence; Rescission of UI Procedural Letter 33(81)

The Commission has recently settled a court case challenging the handling of questions involving a separation from employment that occurs during or incident to a leave of absence. Pursuant to that agreement, UI Procedural Letter 33 (81) is hereby rescinded and the following sets forth the Commission's position on these questions.

Nothing contained herein shall be interpreted to conflict with federal and State statutes; specifically, with 26 U.S.C. Section 3304(a)(12) providing that unemployment benefits may not be denied "solely on the basis of pregnancy or termination of pregnancy." Nor is this interpretation intended to conflict with longstanding Commission practice that:

- (1) A pregnant woman is involuntarily separated from her employment where her employment is terminated solely because her employer does not provide work suitable for her in view of her pregnancy; and
- (2) An individual who is discharged solely because she is pregnant is unemployed through no fault of her own.

This interpretation is intended only to be a guide to the adjudication of the issues that may arise where a worker and the employer agree to a leave of absence and the worker, for any reason, including temporary disability, then or thereafter files a claim for unemployment insurance benefits before returning to work.

A leave of absence is defined as a contractual arrangement between the employee and the employer whereby the employer/employee relationship is maintained during a temporary period of non-work. It is immaterial for purposes of this interpretation whether the leave of absence was for a time certain or was dependent upon the occurrence or termination of some particular factor. Set forth below are fact situations which probably will cover most questions that arise.

1. If a leave of absence is granted to an individual because of lack of work, the claim should be handled in the same way as a claim for anyone who is separated because of lack of work. Paragraphs (2), (3), (4), and (5)

below would not apply to such individuals. It is interesting to note that leaves of absence of this type are becoming more frequent when employment is curtailed because of lack of work, but the seniority of people for whom no work is available is retained by giving them a leave of absence. It should be understood that individuals unemployed for this reason must be fully available for and seeking other work. State employees, including of course Commission employees, who are affected by the current Reduction in Force fall into this category. They may be considered "On Furlough" or "Leave Without Pay" but it is still a leave of absence and when a claim is filed, the separation should show lack of work.

2. If the leave of absence – except for one caused by lack of work – is still in existence and the reason for the leave of absence still exists in whole or in part, the issue of separation is to be adjudicated. The filing of an unemployment insurance claim alone is not evidence of a voluntary quit. The critical fact to be determined is whether, based on specific facts or circumstances found to exist at or before the filing of the claim, the claimant previously has voluntarily terminated any employment relationship with the employer that granted the leave of absence. If the reason which still exists for the leave of absence gives rise to a question of able and available under G.S. 96-13(a)(3), that issue also shall be adjudicated.
3. If the leave of absence – except for one caused by lack of work – still exists but the reason for the leave has ended completely, the issue of separation is to be adjudicated. The filing of an unemployment claim alone is not evidence of a voluntary quit. The critical facts to be determined are whether the claimant has taken such actions as are reasonable under the circumstances of the individual case to resume work with the employer that granted the leave of absence and, if so, whether the employer provides suitable re-employment. There is no issue of able and available merely because of the leave of absence.
4. If the leave of absence – except for one caused by lack of work – has ended and the reason for the leave still exists in whole or in part, but the individual has not attempted to renegotiate the leave of absence or resume work for the employer, the issue of separation is to be adjudicated. The filing of an unemployment claim alone is not evidence of a voluntary quit.

The critical facts to be determined are whether the claimant has taken such steps as might be reasonable under the circumstances of the individual case (or reasonably omitted to take such steps) to either

extend the leave of absence or return to work and, if so, whether the employer granted the extension or provided suitable re-employment, if sought. If the reason for the leave of absence gives rise to an issue of able and available, that issue shall also be adjudicated.

5. If both the leave of absence and the reason therefore have ended completely, the only issue which arises is the claimant's separation from work. Again, the filing of an unemployment claim alone is not evidence of a voluntary quit. The critical facts to be determined are whether the claimant has attempted to return to work and, if so, whether the employer provided suitable re-employment.

Adopted as an official Interpretation by the Commission on January 9, 1984.