

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 264

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: N.C.G.S. 96-8(10) – Application of this section in cases where an employer's incentive pay plan results in an employee being paid for more hours than he actually worked

N.C.G.S. 96-8(10)a.1. provides:

For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed if he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

N.C.G.S. 96-8(10)b.2. provides:

For benefit weeks within an established benefit year, a claimant shall be deemed to be partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

The wording of these sections requires that the Commission look at the number of hours of work which were available and actually worked by the individual, and is based on a five-day, forty-hour work week. For work weeks which are not set up on a five-day, forty-hour basis, the Commission has interpreted these provisions in terms of percentages, e.g., where an individual works less than 60% of his customary work week, he may be partially unemployed. See Interpretation No. 256.

Based on the wording of the statute and Interpretation No. 256, a decision as to whether an individual is partially unemployed should be based on the number of hours actually available for the individual to work and not upon the number of hours

for which the employer elects to pay an individual under the employer's particular incentive pay plan.

Adopted as an official Interpretation by the Commission on November 14, 1984.