

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

INTERPRETATION NO. 267

TO: Employment Security Commission

FROM: T. S. Whitaker, Chief Counsel

SUBJECT: Disability Pension Offset Requirements

The Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3304(a)(15), requires that the amount of unemployment compensation payable to an individual for any week during which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that such payment is under a plan maintained (or contributed to) by a base period or chargeable employer. N.C. Gen. Stat. § 96-14(9) adopted such federal requirement.

Inquiry has been made whether this subsection of North Carolina law applies to disability retirements. Due to the clear similarity with federal law, and persuaded by the U.S. Department of Labor's Unemployment Insurance Program Letter No. 22-87, expiration date 4-30-88, we are of the opinion it does.

Since the law specifies that this reduction in unemployment insurance benefits must occur for retirement payments based on the previous work of such individual, it applies only to retirement income collected by the person who actually earned this income. It does not apply, for example, to a survivor's or widow's or widower's benefit that is payable to a survivor, and is not based on the previous work of that survivor. Likewise, temporary disability insurance payments and worker's compensation (including Black Lung benefits), which are not payable as retirement or pension benefits are not deductible under this subsection, although they may be under N.C. Gen. Stat. § 96-13(a)(4). No exhaustive list of all the kinds of payments that are deductible is available. Payments provided for under the plans or programs listed below are subject to the pension offset requirements:

1. Primary social security old age and disability retirements, including those based on self-employment;
2. State and local government pensions of all types;
3. Federal Civil Service pensions, including disability pensions;

4. Private for-profit employer pensions;
5. Non-profit employer pensions;
6. Military retirement pensions and disability retirement pensions;
7. Railroad Retirement annuities;
8. Benefits derived from Individual Retirement Accounts; and
9. Benefits based on Keogh plans.

*Except for Item 1 above, all are deductible only if the base period employer(s) contributed in whole or part to the plan on the individual's behalf.

**If an ex-service person is receiving a retirement pension based on length of service, or disability, from the branch of military service in which served, this pension is deductible; however, if the disability payment is from the Veteran's Administration, the disability payment is not deductible.

In contrast to N.C. Gen. Stat. § 96-8(10)c., unless the claimant or the employer specifies otherwise, lump-sum retirement payments are to be deducted only in the week received.

Adopted as an Official Interpretation by the Commission on September 11, 1987.