

South Carolina

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

No new laws or regulations enacted in 2015 or 2016.

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

No new laws or regulations enacted in 2015 or 2016.

V. Drug Testing

State unemployment provisions provide that an insured worker may be ineligible for benefits if discharged for illegal drug use under certain conditions. Provisions related to these conditions have been amended to provide that the worker will be ineligible if:

- S/he provides a blood, hair, oral fluid, or urine specimen during a drug test administered on the employer's behalf that tests positive for illegal drugs or legal drugs used unlawfully, provided: •The sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and
- The test was performed by a laboratory certified to perform such tests by the U.S. Department of Health and Human Services' Substance Abuse Mental Health Services Administration (USDHHS/SAMHSA), the College of American Pathologists or the State Law Enforcement Division; and
- An initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or a more accurate scientifically accepted method approved by USDHHS/SAMHSA.

S.C. Code Ann. § 41-35-120 (Effective Date 06/11/2015).

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

South Carolina has amended its statute governing unemployment benefits for corporate officers, and increased the penalties for making false statements or representations, or failing to disclose material facts to prevent or reduce unemployment benefits or contributions, and for willfully violating unemployment provisions.

Corporate Officers

Before the amendments, corporate officers were exempt from unemployment benefits, but an employer could elect to cover all corporate officers. As amended, the law expands the definition of a corporate officer to include a person appointed or otherwise serving as an officer for a corporation, as well as a person who owns 25% or more of the shares of a corporation or who otherwise exercises an ownership interest in a corporation.

The amendments place the onus on an employer to opt out of covering all its corporate officers. To opt out, an employer must provide the Department of Employment and Workforce a written election that all services performed by its corporate officers will not be deemed to constitute employment for unemployment purposes for at least two calendar years. A corporation must register with the Department all exempt corporate officers. Registration forms received and approved by the Department on or before January 15 must become effective the first day of the calendar year, and those received and approved after January 15 must become effective January 1 of the following year; the forms must remain in effect for at least two consecutive calendar years. Also, an employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. However, if the employer fails to provide notice, their status as corporate officers is unchanged and they remain ineligible for benefits.

The amendments add the following provisions specific to services performed by a person with at least a 25% ownership interest. Services are considered covered employment unless the entity elects not to cover the individual. Additionally, the individual can elect not to cover him or herself by providing the Department the aforementioned written election. Generally, the same process applies, but the exemption must not be retroactive. A newly formed business entity with an individual with a 25% ownership interest must register with the Department each person it elects to exempt within 30 calendar days after becoming an employer under the unemployment laws. Registration forms received and approved by the Department must become effective on and after the date of approval and must remain in effect for at least two consecutive calendar years.

In either situation, entities claiming exemption are ineligible for a refund or credit for contributions paid for corporate officers before the exemption's effective date.

The above provisions apply retroactively to contribution rates calculated and imposed on or after January 1, 2015. If applying the above provisions would reduce an employer's contribution rates, the Department must credit that amount against future contributions from the employer until the credit is exhausted.

Penalties

The penalty has increased from a fine between \$20 to \$100 or 30 days' imprisonment, to a fine between \$50 and \$250 or 30 days' imprisonment for: 1) false statements or representations or a failure to disclose material facts to prevent or reduce unemployment benefits or contributions; and 2) willful violations of unemployment laws by an employing unit or person.

S.C. Code Ann. § 41-27-265, S.C. Code Ann. § 41-41-30, and S.C. Code Ann. § 41-41-50 (Effective Date 06/18/2015).