

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 253

TO: Employment Security Commission
FROM: T. S. Whitaker, Acting Chief Counsel
SUBJECT: Total and Partial Unemployment

We have received inquiries recently on behalf of employers who have elected payments in lieu of contributions pursuant to G.S. 96-9(d). The question raised is whether such a "reimbursement" employer should be charged, and the claimant paid benefits, when the claimant had full-time work with another employer and part-time work with the "reimbursement" employer, and was then laid off from the full-time work with the part-time work unchanged. Since G.S. 96-9(c)(2) b. does not apply to "reimbursement" employers, the "reimbursement" employer will be charged its pro rata share (based on the wages paid in the be period) of the benefits paid even though it is still providing the amount of work it has always provided. The inquiries urge the Commission to consider the total hours worked for both employers in determining whether the claimant worked less than the equivalent of "three customarily scheduled full-time days" in an attempt to render the claimant not unemployed.

The phrases "in the establishment, plant, or industry in which he has payroll attachment. . ." or "in which he is employed. . ." G.S. 96-8(10) a.1., b. 2., immediately follow the 60 percent formula. These phrases, in our opinion, make it clear that the Commission cannot, the way the law is written, consider the total hours for both employers, but must consider the 60 percent formula with reference to the full-time employer, the employer from whom the lack of work originated and with whom the claimant has payroll attachment or is employed. In other words, in the example given, the 60 percent formula applies only to the full-time employer in determining whether there is unemployment, and the earnings from both are considered only for purposes in determining the ineligible amount. Although in this type of situation the "reimbursement" employer is treated differently than a taxpaying employer, such different treatment is the effect of the election the "reimbursement" employer has made, which in most other cases is much more favorable treatment.

Adopted as an official Interpretation by the Commission on February 23, 1982.