

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

400U0291

## HOUSE BILL NO. 1055

Introduced by: The Committee on Commerce and Energy at the request of the Department  
of Labor and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding unemployment  
2 insurance employer charges and claimant misrepresentation regarding benefit overpayments  
3 and to correct references to certain provisions pertaining to unemployment insurance.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 61-6-39 be amended to read as follows:

6 61-6-39. Any individual who has willfully or fraudulently misrepresented any fact to secure  
7 or increase benefits under this title shall be denied benefits for ~~not less than one week and not~~  
8 ~~to exceed fifty-two weeks~~ of otherwise compensable unemployment, as defined in this chapter  
9 from and after the date such misrepresentation or fraudulent act is discovered in accordance with  
10 rules promulgated by the department pursuant to chapter 1-26. In addition to any penalty  
11 imposed under this title, the department shall impose a penalty equal to fifty percent of the  
12 amount of benefits obtained by willful or fraudulent misrepresentation for the first offense and  
13 a penalty equal to one hundred percent of the amount of benefits for each subsequent offense.  
14 Any penalty collected shall be paid into the unemployment trust fund.

15 Section 2. That § 61-5-39 be amended to read as follows:



1       61-5-39. Each employer's experience-rating account shall be charged with all benefits  
2 chargeable, as provided in this title, except extended benefits paid as provided in §§ 61-6-49 to  
3 61-6-66, inclusive, against wages paid for employment by the employer. However, no benefits  
4 paid on the basis of a period of employment may be charged to the experience-rating account  
5 of any employer, except as provided in § 61-5-41, if the claimant:

6       (1) Voluntarily separated without good cause attributable to the employer or the  
7 employment;

8       (2) Was discharged or suspended for misconduct connected with the employment, or for  
9 conduct mandated by religious belief which belief cannot be reasonably  
10 accommodated by the employer;

11       (3) Was discharged or suspended for inability or incompetence to successfully complete  
12 a ninety-day probationary period established between the employer and employee at  
13 the time of employment;

14       (4) Earned total base period wages of less than one hundred dollars with one employer;

15       (5) Is receiving benefits while in approved training authorized by § 61-6-21;

16       (6) Performed services while incarcerated in a custodial or penal institution and  
17 terminated such employment because of his transfer or release from the institution;

18       (7) Received benefits for unemployment directly caused by a major natural disaster  
19 declared by the president pursuant to section 410(a) of the Robert T. Stafford  
20 Disaster Relief and Employment Assistance Act, 42 U.S.C. § 5177, if the individual  
21 would have been eligible for disaster unemployment assistance with respect to that  
22 unemployment but for their receipt of unemployment insurance benefits;

23       (8) Received benefits for unemployment resulting directly from the reinstatement of  
24 another employee upon that employee's completion of service in the uniformed

1 services as provided in 38 U.S.C. § 4303(13) as of January 1, 2005, or the completion  
2 of state active duty by members of the National Guard who are activated pursuant to  
3 a call from the Governor as provided by law; or

4 (9) Voluntarily separated to accompany a spouse who was reassigned from one military  
5 assignment to another.

6 However, no relief of charges applies if the department determines that an erroneous  
7 payment has been made because the employer, or an agent of the employer, was at fault for  
8 failing to respond timely or adequately to the department's request for information relating to  
9 the payment of benefits. For the purposes of this section, an erroneous payment is a payment  
10 that would not have been made but for the failure of the employer or the employer's agent to  
11 fully respond to the department's request pursuant to § 61-7-5.

12 Section 3. That § 61-5-41 be amended to read as follows:

13 61-5-41. Benefits paid but not charged to the experience-rating account of any employer  
14 based on subdivisions 61-5-39(1) to ~~(7)~~ (9), inclusive, shall be prorated among all the employer  
15 experience-rating accounts as follows:

16 ~~For calendar year 1983 through calendar year 2005, fifty percent of such noncharges for the~~  
17 ~~preceding calendar year are divided by the total taxable payroll for the preceding year. For~~  
18 ~~calendar year 2006 and thereafter, one~~ One hundred percent of such noncharges for the  
19 preceding calendar year are divided by the total taxable payroll for the preceding calendar year.  
20 The ratio obtained is multiplied by each experience-rated employer's taxable payroll for the  
21 preceding year and the result of this computation is deducted from each employer's account  
22 balance. The deductions from each employer's account balance shall be credited to the pool  
23 account.

24 Section 4. That § 61-1-1 be amended to read as follows:

1       61-1-1. Terms used in this title mean:

2       (1) "Annual payroll," the total amount of taxable wages paid by an employer during a  
3       calendar year for employment;

4       (2) "Base period," the first four out of the last five completed calendar quarters  
5       immediately preceding an individual's benefit year. For an individual who fails to  
6       meet the qualifications of § ~~61-6-7~~ 61-6-4 due to the receipt of temporary total  
7       disability payments under worker's compensation, the base period is the first four of  
8       the last five completed quarters preceding the disability if a claim for unemployment  
9       benefits is filed within twenty-four months of the date on which the individual's  
10      disability was incurred. For an individual who fails to meet the minimum  
11      requirements of § ~~61-6-7~~ 61-6-4 due to insufficient wages, the base period is the four  
12      completed calendar quarters immediately preceding the individual's benefit year.  
13      However, no calendar quarter used in one base period of a valid claim may be used  
14      in a subsequent base period;

15      (3) "Benefit year," the one-year period beginning with the day on which a claimant files  
16      a valid new claim for benefits, or the one-year period beginning with the day on  
17      which a claimant files a valid new claim after the termination of his last preceding  
18      benefit year;

19      (4) "Benefits," the money payments payable to an unemployed individual, as provided  
20      in this title;

21      (5) "Calendar quarter," the period of three consecutive calendar months ending on March  
22      thirty-first, June thirtieth, September thirtieth, or December thirty-first;

23      (6) "Contributions," the money payments to the state unemployment compensation fund  
24      required by this title;

- 1 (7) "Department," the Department of Labor and Regulation created by chapter 1-37;
- 2 (8) "Educational service agency," a governmental agency or governmental entity which  
3 is established and operated exclusively for the purpose of providing services to one  
4 or more educational institutions;
- 5 (9) "Employment office," a free public employment office, or branch thereof, operated  
6 by this state or maintained as part of a state or federal controlled system of public  
7 employment offices;
- 8 (10) "Employment security administration fund," the employment security administration  
9 fund established by this title;
- 10 (11) "Extended benefits," the benefits that are provided in §§ ~~61-6-29 to 61-6-35~~ 61-6-49  
11 to 61-6-66, inclusive;
- 12 (12) "Fund," the unemployment compensation fund established by this title;
- 13 (13) "Hospital," an institution which has been licensed, certified or approved by the State  
14 Department of Health as a hospital;
- 15 (14) "Institution of higher education," an educational institution which:
- 16 (a) Admits as regular students only individuals having a certificate of graduation  
17 from a high school, or the recognized equivalent of such a certificate; and
- 18 (b) Is legally authorized in this state to provide a program of education beyond  
19 high school; and
- 20 (c) Provides an educational program for which it awards a bachelor's or higher  
21 degree, or provides a program which is acceptable for full credit toward such  
22 a degree, provides an educational program of postgraduate or postdoctoral  
23 studies, or provides an educational program of training to prepare students for  
24 gainful employment in a recognized occupation; and

1 (d) Is a public or other nonprofit institution.

2 Notwithstanding any of the foregoing provisions of this subdivision, all colleges and  
3 universities in this state are "institutions of higher education";

4 (15) "Insured work," employment for employers as defined in §§ 61-1-4 to ~~61-1-31~~ 61-1-  
5 45, inclusive;

6 (16) "State," a state of the United States of America and the District of Columbia, the  
7 Commonwealth of Puerto Rico and the Virgin Islands;

8 (17) "Wages," all remuneration paid for services, including commissions and bonuses.

9 The term does not include remuneration described by §§ ~~61-1-32 to 61-1-35~~ 61-1-46  
10 to 61-1-50, inclusive. The term includes tips and other remuneration upon which a  
11 tax is imposed by the Federal Unemployment Tax Act and the reasonable cash value  
12 of remuneration paid in any medium other than cash determined in accordance with  
13 rules promulgated pursuant to chapter 1-26 by the secretary of labor and regulation;

14 (18) "Week," the period or periods of seven consecutive calendar days ending at midnight.

15 The secretary of labor and regulation may promulgate rules pursuant to chapter 1-26  
16 to prescribe that a week is in, within or during that benefit year which includes the  
17 greater part. For the purpose of § 61-1-4, if a week includes both December thirty-  
18 first and January first, the days of that week up to January first shall be considered  
19 one calendar week and the days beginning January first another week;

20 (19) "Weekly benefit amount," the amount of benefits an individual is entitled to receive  
21 for one week of total unemployment. An individual's weekly benefit amount  
22 determined for the first week of his benefit year shall constitute his weekly benefit  
23 amount throughout the benefit year.

24 Section 5. That § 61-1-4 be amended to read as follows:

1       61-1-4. As used in this title, the term, employer, means:

2       (1) For each calendar year, any employing unit which:

3           (a) In any calendar quarter in either the current or preceding calendar year paid for  
4           service in employment wages of one thousand five hundred dollars or more;

5           or

6           (b) For some portion of a day in each of twenty different calendar weeks, whether  
7           or not such weeks were consecutive, in either the current or the preceding  
8           calendar year, had in employment at least one individual (irrespective of  
9           whether the same individual was in employment in each such day);

10       (2) Any employing unit for which service in employment, as defined in § ~~61-1-10.2~~ 61-  
11       1-13, is performed, ~~except as provided in subdivisions (6) and (7) of this section;~~

12       (3) Any employing unit for which service in employment, as defined in § ~~61-1-10.3~~ 61-  
13       1-15, is performed, ~~except as provided in subdivisions (6) and (7) of this section;~~

14       (4) Any employing unit for which agricultural labor as defined in § ~~61-1-25~~ 61-1-18 is  
15       performed, subject to subdivision ~~61-1-24~~ (1) 61-1-17(1);

16       (5) Any employing unit for which domestic service in employment as defined in § ~~61-1-~~  
17       ~~27~~ 61-1-19 is performed, ~~subject to § 61-1-27.~~

18       In determining whether or not an employing unit for which service other than domestic  
19       service is also performed is an employer under subdivision (1), (2), (3), or (4) of this section the  
20       wages earned on the employment of an employee performing domestic service, may not be  
21       taken into account.

22       In determining whether or not an employing unit for which service other than agricultural  
23       labor is also performed is an employer under subdivision (1), (2), (3), or (5) of this section, the  
24       wages earned or the employment of an employee performing service in agricultural labor, may

1 not be taken into account. If an employing unit is determined to be an employer of agricultural  
2 labor, the employing unit shall be determined an employer for the purposes of subdivision (1)  
3 of this section.

4 Section 6. That § 61-1-8 be amended to read as follows:

5 61-1-8. As used in this title, the term, employer, includes any employing unit which, having  
6 become an employer under subdivision 61-1-4(2), or under any of §§ 61-1-5 to 61-1-7,  
7 inclusive, has not, under §§ ~~61-5-51 to 61-5-53, inclusive~~ 61-5-11, 61-5-15, and 61-5-17, ceased  
8 to be an employer subject to this title.

9 Section 7. That § 61-1-9 be amended to read as follows:

10 61-1-9. As used in this title, the term, employer, includes for the effective period of its  
11 election pursuant to §§ 61-5-3 to ~~61-5-5~~ 61-5-5, inclusive, § 61-5-32 and § ~~61-5-11~~ 61-5-33,  
12 any other employing unit which has elected to become fully subject to this title.

13 Section 8. That § 61-2-15 be amended to read as follows:

14 61-2-15. The Department of Labor and Regulation may establish and contract for a  
15 retirement program, except as provided by chapter 3-12, for the personnel of the divisions  
16 ~~established by § 61-2-10~~, in cooperation with the appropriate agency of the federal government.  
17 The department's share of the costs of the program shall be paid from the administrative funds  
18 granted to the department by the federal government. No obligation may be incurred against the  
19 state's general fund to pay for this program. The department may execute a contract or contracts  
20 with the retirement plan administrators as the employee's retirement board selects. In making  
21 the selection, the board shall consider, among other things, financial stability, experience and  
22 claims facilities. In evaluating these factors, the board may employ the services of impartial,  
23 professional analysts or actuaries, or both.

24 Section 9. That § 61-4-2 be amended to read as follows:



1       61-4-2. The unemployment compensation fund shall consist of:

2       (1)    All contributions collected under this title together with any interest and penalties  
3            thereon collected pursuant to §§ ~~61-5-38 and 61-5-39~~ 61-5-57 and 61-5-58;

4       (2)    Interest earned upon any moneys in the fund;

5       (3)    Any property or securities acquired through the use of moneys belonging to the fund;  
6            and

7       (4)    All earnings of such property or securities.

8       All moneys in the fund shall be mingled and undivided.

9       Section 10. That § 61-4-5 be amended to read as follows:

10      61-4-5. All moneys payable to the unemployment compensation fund upon receipt thereof  
11      by the Department of Labor and Regulation shall immediately be deposited in the clearing  
12      account. Refunds payable pursuant to §§ ~~61-1-17 and 61-5-37~~ 61-1-31 and 61-5-56 may be paid  
13      from the clearing account. After clearance thereof all other moneys in the clearing account shall  
14      immediately be deposited with the secretary of the treasury of the United States of America to  
15      the credit of the account of this state in the unemployment trust fund established and maintained  
16      pursuant to section 904 of the Social Security Act as amended, any provisions of law in this  
17      state relating to the deposit, administration, release, or disbursement of moneys in the possession  
18      or custody of this state to the contrary notwithstanding.

19      Section 11. That § 61-5-26 be amended to read as follows:

20      61-5-26. Notwithstanding any other provision of this chapter, an employer who transfers all  
21      or a segregable part of the employer's operations from another state to this state for the purposes  
22      of this chapter shall be deemed to be a qualified employer within the meaning of § 61-5-25, as  
23      of the computation date applicable to the calendar year within which the transfer occurs, if:

24      (1)    The employer has paid wages subject to the federal unemployment tax act for

1           eighteen consecutive completed calendar quarters immediately preceding the  
2           computation date specified above;

3           (2)    Within ninety days of the transfer of operations, the employer notifies the department  
4           thereof and requests a contribution rate under the provisions of §§ ~~61-5-18.5 to 61-5-~~  
5           ~~18.7, inclusive~~ 61-5-25.1 and 61-5-25.2; and

6           (3)    The employer certifies to the department all information with respect to wages,  
7           contributions, and benefit charges in connection with the transferred operations and  
8           any other information which the department determines to be necessary.

9           Section 12. That § 61-5-26.1 be amended to read as follows:

10          61-5-26.1. The employer has fifteen days after receipt of notice of determination of  
11          contribution rate computed under §§ ~~61-5-18.5 to 61-5-18.7, inclusive, 61-5-25.1 and 61-5-25.2~~  
12          within which to withdraw the employer's request for application of the provisions of § 61-5-26.

13          Section 13. That § 61-5-26.3 be amended to read as follows:

14          61-5-26.3. Wages, contributions, and benefits resulting in rating account charges in  
15          connection with the transferred operations, shall be deemed to have been paid in this state for  
16          the purpose of computing rates under §§ ~~61-5-18.1 to 61-5-18.4, inclusive~~ 61-5-25.1 and 61-5-  
17          25.2. The employer's rating account balance applicable to the transferred operations prior to the  
18          transfer date shall be the balance used in determining the first year's rate. The balance for the  
19          second and third years shall be the amount transferred from the other state less benefits after the  
20          date of transfer and the contributions paid less benefits charged in this state during the period.

21          Section 14. That § 61-5-26.4 be amended to read as follows:

22          61-5-26.4. The contribution rate to be assigned to the employer in South Dakota shall be the  
23          rate obtained by the computation provided in §§ ~~61-5-18.5 to 61-5-18.7, inclusive~~ 61-5-25.1 and  
24          61-5-25.2, but in no event may the rate assigned be lower than one and one-half percent.

1 Section 15. That § 61-5A-1 be amended to read as follows:

2 61-5A-1. In lieu of contributions required by employers under this chapter, the state of South  
3 Dakota shall pay into the unemployment compensation trust fund an amount equivalent to the  
4 amount of benefits paid based on wages earned with the state plus, prior to December 31, 1978,  
5 one-half of the amount of extended benefits paid, and thereafter, the amount of extended  
6 benefits paid, to individuals based on wages paid by the state for service defined in § ~~61-1-10.2~~  
7 61-1-13.

8 Section 16. That § 61-5A-9.1 be amended to read as follows:

9 61-5A-9.1. Any nonprofit organization which elects to make payments in lieu of  
10 contributions into the unemployment compensation fund as provided in § 61-5A-6, 61-5A-7 or  
11 61-5A-9, ~~shall~~ is not be liable to make such payments with respect to the benefits paid to any  
12 individual whose base period wages include wages for previously uncovered services as defined  
13 in § ~~61-6-5~~ 61-6-7 to the extent that the unemployment compensation fund is reimbursed for  
14 such benefits pursuant to section 121 of Public Law 94-566 as passed October 23, 1976.

15 Section 17. That § 61-5A-13 be amended to read as follows:

16 61-5A-13. The amount of the bond required by § 61-5A-12 ~~shall be~~ is equal to the maximum  
17 effective tax rate times the organization's taxable wages paid for employment as defined in  
18 §§ ~~61-1-10.3 and 61-1-10.4~~ 61-1-15 and 61-1-36 for the four calendar quarters immediately  
19 preceding the effective date of the election. If the nonprofit organization did not pay wages in  
20 each of such four calendar quarters, the amount of the bond shall be as determined by the  
21 department.

22 Section 18. That § 61-5A-21 be amended to read as follows:

23 61-5A-21. Two or more employers who have become liable for payments in lieu of  
24 contributions, in accordance with the provisions of §§ ~~61-5-5.1~~ 61-5-32 and 61-5A-6 to 61-5A-

1 9, inclusive, may file a joint application to the department for the establishment of a group  
2 account for the purpose of sharing the cost of benefits paid that are attributable to service in the  
3 employ of such employers. Each such application shall identify and authorize a group  
4 representative to act as the group's agent for the purposes of this section. Upon its approval of  
5 the application, the department shall establish a group account for such employers effective as  
6 of the beginning of the calendar quarter in which it receives the application and shall notify the  
7 group's representative of the effective date of the account. Such account shall remain in effect  
8 for not less than two years and thereafter until terminated at the discretion of the department or  
9 upon application by the group.

10 Section 19. That § 61-5A-33 be amended to read as follows:

11 61-5A-33. Past due payments of amounts in lieu of contributions or failure to make timely  
12 reports shall be subject to the same interest and penalties that apply to past due contributions  
13 and reports in §§ ~~61-5-38 and 61-5-39~~ 61-5-57 and 61-5-58.

14 Section 20. That § 61-6-8 be amended to read as follows:

15 61-6-8. Unless the provisions of §§ ~~61-6-29 to 61-6-43~~ 61-6-49 to 61-6-64, inclusive, apply,  
16 an individual's maximum benefit amount is an amount equal to one-third of the individual's total  
17 base period wages in covered employment not to exceed twenty-six times the individual's  
18 weekly benefit amount. If that amount is not a multiple of one dollar, it is lowered to the next  
19 lower multiple of one dollar.

20 Trade readjustment payments may allow an individual to receive benefits in excess of  
21 twenty-six weeks if the individual is in training approved by the secretary under the Trade Act  
22 of 1974, as amended by section 2501 of P.L. 97-35--August 13, 1981, and then only as long as  
23 necessary to complete the training.

24 If the benefit year of an individual ends within an extended benefit period, the number of

1 weeks of extended benefits that the individual would, but for this section, be entitled to in that  
2 extended benefit period is reduced by the number of weeks for which the individual received  
3 any amounts as trade readjustment allowances within that benefit year, multiplied by the  
4 individual's weekly benefit amount for extended benefits.

5 Section 21. That § 61-6-48 be amended to read as follows:

6 61-6-48. Any assignment, pledge, or encumbrance of any right to benefits which are or may  
7 become due or payable under this title is void except as provided in this section. The rights to  
8 benefits are exempt from levy, execution, attachment, or any other remedy provided for the  
9 collection of debt. Any benefits received by any individual, so long as the benefits are not  
10 mingled with other funds of the recipient, are exempt from any remedy for the collection of all  
11 debts, except debts incurred for necessities furnished to the individual, the individual's spouse,  
12 or dependents during the time when the individual was unemployed. Any waiver not provided  
13 for in this section is void.

14 The secretary of the Department of Labor and Regulation shall furnish information on  
15 individuals receiving unemployment insurance benefits to the Department of Social Services  
16 in accordance with section 303(e) of the Social Security Act as amended by section 2333(b) of  
17 P.L. 97-5--August 13, 1981. The secretary may also furnish this information in accordance with  
18 section 13 of the Food Stamp Act of 1977 as amended by section 1535 of P.L. 99-198. The  
19 Department of Social Services determines periodically whether any of these individuals  
20 receiving unemployment insurance owe child support obligations or an uncollected overissuance  
21 of food stamp coupons.

22 Each new applicant filing for unemployment insurance benefits shall disclose any obligation  
23 for child support payments in accordance with ~~§ 28-7-2~~ section 454(19) of the Social Security  
24 Act as amended by section 101(a) of P.L. 93-647, and may be required to disclose any

1 obligation for uncollected overissuances (as defined in section 13(c)(1) of the Food Stamp Act  
2 of 1977) of food stamp coupons, to the Department of Labor and Regulation at the time of  
3 filing. If an individual disclosing child support obligations is eligible for unemployment  
4 insurance benefits, the secretary shall notify the Department of Social Services.

5 The secretary shall deduct from an eligible individual's unemployment insurance benefit  
6 payment and pay to the secretary of the Department of Social Services:

7 (1) The amount determined by agreement between the individual and the Department of  
8 Labor and Regulation; or

9 (2) The amount determined by agreement between the individual and the Department of  
10 Social Services; or

11 (3) The amount determined by the Department of Social Services through legal  
12 processes.

13 If an individual disclosing an uncollected overissuance of food stamp coupons is eligible for  
14 unemployment insurance benefits, the secretary may notify the Department of Social Services.

15 The secretary may also deduct from an eligible individual's unemployment insurance benefit  
16 payment, and pay to the secretary of the Department of Social Services, the amount determined  
17 by subdivisions (1) to (3), inclusive, of this section.

18 The secretary of the Department of Social Services shall reimburse the Department of Labor  
19 and Regulation for administrative costs incurred by the Department of Labor and Regulation  
20 attributable to child support payment obligations and food stamp overissuance obligations being  
21 enforced by the Department of Social Services.

22 Section 22. That § 61-6A-2 be amended to read as follows:

23 61-6A-2. For the purposes of §§ 61-6A-1 to 61-6A-14, inclusive, the term, employment,  
24 includes any service performed in the employ of an Indian tribe, as defined in section 3306(u)

1 of the Federal Unemployment Tax Act (FUTA), as of December 21, 2000, if the service is  
2 excluded from employment as defined in FUTA solely by reason of section 3306(c)(7) FUTA  
3 as of December 21, 2000, and is not otherwise excluded from employment under §§ 61-6A-1  
4 to 61-6A-14, inclusive. For purposes of this section, the exclusions from employment in  
5 subdivisions ~~61-1-10.4(3) to 61-1-10.4(6)~~ 61-1-36(3) to 61-1-36(6), inclusive, are applicable  
6 to services performed in the employ of an Indian tribe.

7 Section 23. That § 61-6A-3 be amended to read as follows:

8 61-6A-3. Benefits based on service in employment defined in §§ 61-6A-1 to 61-6A-14,  
9 inclusive are payable in the same amount, on the same terms, and subject to the same  
10 conditions, as benefits payable based on other services subject to Title 61. However, the  
11 provisions of §§ ~~61-6-1.2, 61-6-1.3, and 61-6-1.6~~ 61-6-24, 61-6-25, and 61-6-26 apply to  
12 benefits based on service in employment defined in §§ 61-6A-1 to 61-6A-14, inclusive.

13 Section 24. That § 61-7-10.1 be amended to read as follows:

14 61-7-10.1. If a determination or redetermination allowing benefits is affirmed in any amount  
15 by the Department of Labor and Regulation benefits shall be paid promptly regardless of any  
16 further appeal or the disposition of the appeal and no injunction, supersedeas, stay or other unit  
17 or process suspending the payment of benefits may be issued by any court; but if the decision  
18 is finally modified or reversed to deny benefits:

- 19 (1) Benefits may not be paid for any week of unemployment involved in the modification  
20 or reversal, until a disqualification if imposed has been satisfied; and
- 21 (2) No contributing employer's experience rating account may be charged with benefits  
22 paid prior to the determination reversing or modifying a prior determination that  
23 would not have been paid pursuant to the reversing or modifying determination, but  
24 the noncharging does not apply to employers liable for reimbursement to the

1 department for payments that were paid by the department; and

2 (3) Benefits paid pursuant to this section or § 61-7-5 shall constitute a recoverable

3 overpayment as provided in § ~~61-6-23~~ 61-6-41.