

1 SB344
2 175003-1
3 By Senator Holtzclaw
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 10-MAR-16

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8 SYNOPSIS: Under existing law, an employee of a private
9 company that provides direct services to schools is
10 not eligible for unemployment compensation for the
11 period that the individual does not perform his or
12 her duties because of a holiday or weather
13 conditions.

14 This bill would provide that an employee of
15 a private company that provides direct services to
16 schools may not receive unemployment benefits
17 during breaks in employment occasioned by a
18 vacation or holiday recess.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 To amend Section 25-4-70, Code of Alabama 1975, as
25 amended by Act 2015-453, 2015 Regular Session, relating to
26 unemployment compensation; to provide that an employee of
27 private a company that provides direct services to schools may

1 not receive unemployment benefits during breaks in employment
2 occasioned by a vacation or holiday recess.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 25-4-70, Code of Alabama 1975, as
5 amended by Act 2015-453, 2015 Regular Session, is amended to
6 read as follows:

7 "§25-4-70.

8 "(a) After contributions have been due under this
9 chapter for two years, benefits shall become payable from the
10 fund to any employee who thereafter is or becomes unemployed
11 and eligible for benefits, and shall be paid through
12 unemployment offices or such other agencies at such times and
13 in such manner as the director may prescribe.

14 "(b) Benefits based on service in employment defined
15 in subdivisions (a) (2) and (a) (3) of Section 25-4-10 shall be
16 payable in the same amount, on the same terms and subject to
17 the same conditions as compensation payable on the basis of
18 other service subject to this chapter; except, that:

19 "(1) With respect to any week of unemployment
20 beginning after December 31, 1977, benefits shall not be paid
21 based on service in an instructional, research, or principal
22 administrative capacity for any educational institution for
23 any such week commencing during the period between two
24 successive academic years, or during a similar period between
25 two regular terms, whether or not successive, or during a
26 period of paid sabbatical leave provided for in the
27 individual's contract, to any individual if such individual

1 performs such services in the first of such academic years (or
2 terms) and if there is a contract or reasonable assurance that
3 such individual will perform services in any such capacity for
4 any educational institution in the second of such academic
5 years or terms.

6 "(2) With respect to any week of unemployment
7 beginning after April 3, 1983, benefits shall not be paid on
8 the basis of service in any other capacity for an educational
9 institution, to any individual for any such week which
10 commences during a period between two successive academic
11 years or terms if such individual performs such services in
12 the first of such academic years or terms and there is a
13 reasonable assurance that such individual will perform such
14 services in the second of such academic years or terms, except
15 that if compensation is denied to any individual under this
16 subdivision (2) for weeks of unemployment beginning on or
17 after April 3, 1983, and such individual was not offered an
18 opportunity to perform such services for the educational
19 institution for the second of such academic years or terms,
20 such individual shall be entitled to a retroactive payment of
21 benefits for each week for which the individual filed a timely
22 claim for benefits and for which benefits were denied solely
23 by reason of this subdivision (2); provided further that such
24 individual has given notice that the opportunity to return was
25 not offered or was withdrawn to the director in such manner
26 and within such time as the director by regulation shall
27 prescribe.

1 "(3) With respect to any week of unemployment
2 beginning on or after April 1, 1984, benefits shall not be
3 paid based on services in any capacity described in
4 subdivisions (1) and (2) to any individual for any week which
5 commences during an established and customary vacation period
6 or holiday recess if such individual performs such services in
7 the period immediately before such vacation period or holiday
8 recess, and there is a reasonable assurance that such
9 individual will perform such services in the period
10 immediately following such vacation period or holiday recess.
11 The term "employment" shall include services performed in the
12 employ of an Indian tribe, as herein defined, provided such
13 service is excluded from employment as defined in FUTA by
14 reason of Section 3306(c)(7), and is not otherwise excluded
15 from employment under this chapter for purposes of this
16 section. The exclusion from employment in Section 25-4-10(b)
17 shall be applicable to services performed in the employ of an
18 Indian tribe.

19 "(4) With respect to any week of unemployment
20 beginning on or after April 1, 1984, benefits shall not be
21 paid on the basis of services described in subdivisions (1)
22 and (2) of this subsection in any such capacities as specified
23 in subdivisions (1), (2), and (3) to any individual who
24 performed such services in an educational institution while in
25 the employ of an educational service agency. For the purposes
26 of this subdivision the term "educational service agency"
27 shall mean a governmental agency or governmental entity which

1 is established and operated exclusively for the purpose of
2 providing such services to one or more educational
3 institutions.

4 "(5) With respect to weeks of unemployment beginning
5 on or after April 1, 1984, benefits shall not be paid with
6 respect to services to which Sections 25-4-8(a)(7),
7 25-4-8(a)(8), 25-4-10(a)(2) and 25-4-10(a)(3) apply, if such
8 services are provided to or on behalf of an educational
9 institution, under the same circumstances and subject to the
10 same terms and conditions as described in subdivisions (1),
11 (2), (3), and (4) of this subsection.

12 "(6) With respect to weeks of unemployment beginning
13 before April 1, 1984, benefits shall be paid on the basis of
14 this section prior to that date.

15 "(7) For the purposes of this subsection, the term
16 "reasonable assurance" means a written, verbal, or implied
17 agreement that the employee will perform services during the
18 ensuing academic year or term and the term "contract" is
19 intended to include tenure status.

20 "(c) Benefits paid based on services in the employ
21 of an Indian tribe shall be payable on the same terms and
22 subject to the same conditions as compensation payable on the
23 basis of other service subject to this chapter.

24 "(d) Notwithstanding any provision of law, with
25 respect to any week of unemployment beginning on or after May
26 1, 2015, benefits based on service in employment defined in
27 subdivision (1) of subsection (a) of Section 25-4-10 may not

1 be paid with respect to services rendered to an educational
2 institution, when the services are performed by an individual
3 employed by an employer primarily or exclusively engaged in
4 the provision of its employees to perform work for educational
5 institutions, for any week commencing during the period
6 between two successive academic years or terms, or for any
7 week which commences during an established and customary
8 vacation period or holiday recess, ~~for the period that the~~
9 ~~individual does not perform his or her duties because of a~~
10 holiday or weather if the individual performs services for the
11 educational institution in the period immediately before the
12 vacation period or holiday recess, and there is a reasonable
13 assurance that such individual will perform the same or
14 similar services for the educational institution in the period
15 immediately following the vacation period or holiday recess.

16 This subsection applies regardless of whether the employer
17 qualifies for exemption from federal employment tax under 26
18 U.S.C. 501(a) and regardless of whether the employer is a
19 religious, charitable, or educational institution or
20 organization. For purposes of this subsection, the term
21 reasonable assurance shall have the same meaning as set out in
22 subdivision (7) of subsection (b) of this section."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.