



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Department of Commerce, Division of Employment Security

2. Rule citation & name: 04 NCAC 24G .0102 - NOTICE THAT EMPLOYERS MUST GIVE TO EMPLOYEES AS A RESULT OF CORONAVIRUS

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: April 14, 2020

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: April 3, 2020 and May 14, 2020
- b. Proposed Temporary Rule published on the OAH website: April 3, 2020 and May 14, 2020
- c. Public Hearing date: April 22, 2020 and May 26, 2020
- d. Comment Period: April 13 through May 8, 2020; May 15, 2020 through June 8, 2020
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): May 14, 2020
- f. Adoption by agency on: June 29, 2020
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: July 24, 2020
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D § 1402 (2020)
Effective date: March 18, 2020
- ☒ A recent change in federal or state budgetary policy.
Effective date of change: March 17, 2020
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Executive Order No. 118, Governor Roy Cooper, 2020

Explain:

Reason for Proposed Temporary Action: A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress, Cite Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, 1402 (2020). A recent change in federal or state budgetary policy Effective date of change March 17, 2020. Executive Order No. 118, Governor Roy Cooper, 2020. On March 10, 2020 the Governor of North Carolina Issued Executive Order No. 116 and declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of Coronavirus Disease 2019 (COVID-19), a respiratory disease that results from the coronavirus. COVID-19 can result in serious illness or death. On March 11, 2020, the World Health Organization declared the coronavirus an international pandemic. The World Health Organization, the Centers for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 17, 2020, the Governor of North Carolina issued Executive Order No. 118 and directed the Secretary of Commerce and Assistant Secretary for the Division of Employment Security to ensure that individuals who are separated from employment, had hours reduced, or are prevented from working due to a medical condition caused by COVID-19 or due to communicable disease control measures are eligible for unemployment benefits to the maximum amount permitted by federal law.

On March 18, 2020 the President of the United States signed the Families First Coronavirus Response Act (Pub. L. 116-127). The legislation makes emergency supplemental appropriations in response to the spread of COVID19 and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) at Division D. EUISAA sets forth the requirements for emergency administrative grants to states and authorizes emergency flexibility allowing states to temporarily modify certain aspects of their unemployment compensation laws, a short-term waiver of interest on state trust fund advances, and full federal funding during extended benefit periods through December 31, 2020.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The Families First Coronavirus Response Act (Pub. L. 116-127) and the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) require North Carolina to meet certain requirements in order to be eligible to receive EUISAA funds. Since March 15, 2020, 1,084,700 individuals have filed claims for unemployment benefits and the amount of \$4,517,051,519 has been paid in unemployment benefits for claims effective as of March 15, 2020.

In addition to the federal legislation and the North Carolina Governor's Executive Order No. 118, USDOL has issued guidance and recommendations to assist states in meeting the requirements to qualify for funding. These recommendations are found in Unemployment Insurance Program Letter (UIPL) Nos. 16-20 (issued April 5, 2020), 13-20 (issued March 22, 2020) and 10-20 (issued March 12, 2020). For purposes of administering unemployment assistance, except where contrary to law, operating instructions or guidance, the State must administer the program in accordance with the Disaster Unemployment Assistance regulations at 20 CFR Part 625, including following the provisions for fraud and overpayments. The emergency rule is necessary to ensure that North Carolina is compliant with federal requirements for receiving funds needed to administer the State's unemployment insurance in the face of the COVID-19 pandemic.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Regina S. Adams

Phone: 919-707-1026

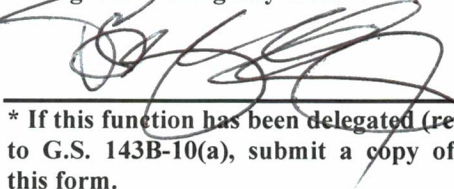
E-Mail: DES.Rules@nccommerce.com

Agency contact, if any: Regina S. Adams

Phone: 919-707-1026

E-Mail: regina.adams@nccommerce.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Pryor Gibson

Title: Assistant Secretary

E-Mail: assistantsecretary@nccommerce.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Department of Commerce, Division of Employment Security

RULE CITATION: 04 NCAC 24G .0102

DEADLINE FOR RECEIPT: JULY 10, 2020

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (2), remove the “,”

In (4), for clarity I would suggest adding “personal” between the words “following” and “information”.

*Also for clarity in each of (A) and (B), insert “their” at beginning of phrase
In (C), insert “proof of” at beginning of phrase.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Karlene S. Turrentine
Commission Counsel
Date submitted to agency: 6.29.20

04 NCAC 24G .0102 is adopted under emergency and temporary procedures as follows:

NOTICE THAT EMPLOYERS MUST GIVE TO EMPLOYEES AS A RESULT OF CORONAVIRUS

Employers shall provide employees with notice of the availability of unemployment compensation at the time of separation from employment. The notice shall inform employees of the following:

- (1) Unemployment insurance benefits are available to workers who are unemployed and who meet the State's eligibility requirements;
- (2) Employees may file a claim in the first week that employment stops, or work hours are reduced;
- (3) Employees may file claims online at des.nc.gov or by telephone to (888) 737-0259.
- (4) Employees must provide DES with the following information for DES to process the claim:
 - (A) full legal name;
 - (B) social security number; and
 - (C) authorization to work (if the employee is not a U.S. citizen or resident).
- (5) Employees may contact DES at (888) 737-0259 and select the appropriate menu option for assistance.

History Note: Authority G.S. 96-4; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, § 1402 (2020); E.O. 118, Governor Roy Cooper, 2020.
Emergency Adoption Eff. April 1, 2020.
Temporary Adoption Eff. June 29, 2020



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1. Rule-Making Agency: North Carolina Department of Commerce, Division of Employment Security

2. Rule citation & name: 04 NCAC 24G .0103 – TEMPORARY WAIVER OF BENEFIT CHARGES TO EMPLOYER ACCOUNTS

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: April 14, 2020

5. Provide dates for the following actions as applicable:

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

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Phone: 919-707-1026

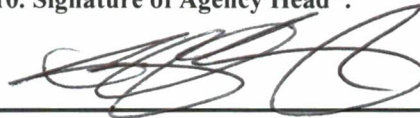
E-Mail: des.rues@nccommerce.com

Agency contact, if any: Regina S. Adams

Phone: 919-707-1026

E-Mail: regina.adams@nccommerce.com

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Pryor Gibson

Title: Assistant Secretary

E-Mail: assistantsecretary@nccommerce.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

What is the purpose of subparagraphs (c), (d) and (e)? If DES must still give notice under 4NCAC 24D .0102, then should not the employer still get notice of its right to protest in the event it is charged for corona-related benefits under (a)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Karlene S. Turrentine
Commission Counsel
Date submitted to agency: 6.29.20

04 NCAC 24G .0103 is adopted under emergency and temporary procedures as follows:

TEMPORARY WAIVER OF BENEFIT CHARGES TO EMPLOYER ACCOUNTS

(a) DES shall temporarily waive the charging of benefit payments to employer accounts.

(b) The temporary waiver of these benefit charges shall apply only to claims filed for the period of and pertaining to the declared coronavirus and COVID-19 public health emergency as set forth in Executive Order No. 118 issued on March 17, 2020.

(c) DES shall temporarily suspend the requirements of 04 NCAC 24D .0102(9) and (10).

(d) DES shall temporarily suspend the requirements of 04 NCAC 24D .0103.

(e) DES shall temporarily suspend the requirements of 04 NCAC 24D .0105.

History Note: Authority G.S. 96-4; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, § 1402 (2020); E.O. 118, Governor Roy Cooper, 2020.
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