

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24A .0105

**DEADLINE FOR RECEIPT: Thursday, March 9, 2017**

***PLEASE NOTE: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Page 1, line 1, add "with changes" between "amended as" to reflect changes since publication*

*Page 2, line 16, define or delete "untimely" Is there a standard set by statute or another rule that clarifies what would qualify as "untimely"? If necessary, please clarify by adding a cross-reference to what creates an untimely standard*

*Page 3, lines 15 and 35, consider replacing "can" with "may"*

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

Abigail M. Hammond  
Commission Counsel  
Date submitted to agency: Wednesday, February 22, 2017

1 04 NCAC 24A .0105 is amended as published in 31:12 NCR 1227 as follows:

2

3 **04 NCAC 24A .0105 DEFINITIONS**

4 (a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this  
5 Chapter:

6 (1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits  
7 after a claimant, as defined in Item ~~(15)~~(16) of this Rule, ceased filing a weekly certification as  
8 defined in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of  
9 eligibility filed after a claim has been reopened shall constitute a waiting period week if all eligibility  
10 requirements set forth in G.S. 96-14.9 are met.

11 (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits  
12 from another state.

13 (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and  
14 render a determination as required by G.S. 96-15(b).

15 (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section  
16 of DES or the Board of Review to review a determination or decision that is adverse to that party.

17 (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal  
18 from a determination by an adjudicator and issues involving the rights, status, and liabilities of an  
19 employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).

20 (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial  
21 administrative evidentiary hearings and make decisions in contested cases for unemployment  
22 insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.

23 (7) "Application for a position" means supplying the information required by an employer to place an  
24 individual in a particular position or opening. Such information may include proof of the  
25 qualifications or license required by the position or opening, employment history, and personal  
26 information, such as full name, Social Security Number or other identification number, telephone  
27 number, and current address. An application for a position may be accomplished in whatever manner  
28 acceptable to an employer, including the completion of a designated form, the provision of a written  
29 resume, or verbally.

30 ~~(7)~~(8) "Authorized Representative" means an individual authorized by an employer or employing unit to  
31 act on the employer or employing unit's behalf before DES.

32 ~~(8)~~(9) "Base period" means as defined in 96-1(b)(3). Calendar quarters are January through March, April  
33 through June, July through September, and October through December.

34 ~~(9)~~(10) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.

35 ~~(10)~~(11) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits.  
36 Benefit wage credits consist of the wages a claimant received or should have received during the  
37 claimant's base period of employment and to include those wages that were awarded and paid to the

1 claimant after the base period pursuant to a court order; a National Labor Relations Board  
2 determination; another adjudicative agency; or by private agreement, consent, or arbitration for loss  
3 of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages  
4 should have been paid.

5 ~~(11)~~(12) “Board of Review” means as defined in G.S. 96-4(b) G.S. 96-15.3 and is the body that conducts  
6 “higher authority review” of appeals arising from the decisions of the Division, tax liability hearings,  
7 and labor disputes. The Board of Review is also referred to as the “Board” or “BOR.”

8 ~~(12)~~(13) “Calendar Period” means the fifty-two week period beginning with the first day of a week in which  
9 an individual first files a valid claim for benefits and registers for work. The week begins on the  
10 first Sunday preceding the initial claim filed and ends the following year at 11:59 p.m. on Saturday.

11 ~~(13)~~(14) “Charging cycle” means the fifty two week period beginning August 1st and ending July 31st the  
12 year following the year in which the employer’s account is assessed and charged for erroneous  
13 payments against its account, due to establishing a pattern of untimely and inadequate responses to  
14 Requests for Separation Information (NCUI 500AB) during the preceding reporting cycle. each  
15 calendar quarter following the prior reporting cycle, during which the employer's account is assessed  
16 and charged for erroneous unemployment insurance benefit payments resulting from untimely or  
17 inadequate responses from the employer to particular Requests for Separation Information (Form  
18 NCUI 500AB) during that charging cycle if the employer met or exceeded the adequacy threshold  
19 in the prior reporting cycle.

20 ~~(14)~~(15) “Chief Appeals Referee” includes the Chief Appeals Referee’s designee, unless otherwise stated.

21 ~~(15)~~(16) “Claimant” means an individual who files an unemployment insurance benefits claim for payments  
22 as provided in G.S. 96-14.1.

23 ~~(16)~~(17) “Clear and convincing evidence” ~~is~~ means evidence indicating that the thing to be proved is highly  
24 probable or reasonably certain.

25 ~~(17)~~(18) “Customarily,” as the term is used in G.S. 96-16, means during at least seventy-five percent of the  
26 calendar years of an observation interval.

27 ~~(18)~~(19) “Day” means a calendar day.

28 ~~(19)~~(20) “Delivery service” means an authorized designated carrier pursuant to Rule 4(j) of the North  
29 Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).

30 ~~(20)~~(21) “DES website” means the internet address found at www.ncese.com www.des.nc.gov.

31 ~~(21)~~(22) “Due diligence” means the measure of carefulness, precaution, attentiveness, and good judgment as  
32 to be expected from, and exercised by a reasonable and prudent person under the particular  
33 circumstances.

34 ~~(22)~~(23) “Effective date of a claim” means either the benefit year beginning on the Sunday preceding the  
35 payroll week ending date if the claimant is payroll attached, or the benefit year beginning on the  
36 Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered  
37 for work if the claimant is not payroll attached.

- 1       ~~(23)~~(24) “Electronic transmission” means transmission by facsimile or internet.
- 2       ~~(24)~~(25) “Equity and good conscience” means fairness as applied to a given set of circumstances.
- 3       ~~(25)~~(26) “Fault” means an error or defect of judgment or of conduct; any deviation from prudence or duty
- 4               resulting from inattention, incapacity, perversity, bad faith, or mismanagement.
- 5       ~~(26)~~(27) “Good cause” means a legally sufficient reason.
- 6       ~~(27)~~(28) “In-person/telephone hearing” means an administrative hearing before the Appeals Section, Board
- 7               of Review, or other designated Hearing Officer where at least one party or witness appears in-person,
- 8               and another party or witness appears by telephone.
- 9       ~~(28)~~(29) “Interstate benefit payment plan” means the plan approved by the Interstate Conference of
- 10              Employment Security Agencies under which benefits may be paid to unemployed claimants absent
- 11              from the state (or states) where benefit wage credits accumulated. This rule incorporates the United
- 12              States Department of Labor’s Interstate Benefit Payment Plan, Interstate Agreements, ET Handbook
- 13              No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and editions of the
- 14              referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are
- 15              located at 700 Wade Avenue, in Raleigh, North Carolina, and can be obtained by request at no cost
- 16              to the public by contacting DES as specified under 04 NCAC 24A .0201.
- 17       ~~(29)~~(30) “Interstate claimant” means a claimant who claims benefits under the unemployment insurance law
- 18              of one or more liable states through the facilities of an agent state, or directly with the liable state.
- 19              The term “interstate claimant” shall not include any claimant who customarily commutes from a
- 20              residence in an agent state to work in a liable state unless the Division finds that this exclusion would
- 21              create an undue hardship.
- 22       ~~(30)~~(31) “Labor dispute” means a dispute between an employer and its employees about wages, hours,
- 23              working conditions, or issues concerning the association or representation of persons in negotiating,
- 24              fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between
- 25              those who could be concerned in the controversy.
- 26       ~~(31)~~(32) “Last known address” means the most recent address provided to DES by the claimant or taxpayer
- 27              located in its official record, except that DES shall update addresses maintained in its official records
- 28              by referring to data accumulated and maintained in the United States Postal Service (USPS) National
- 29              Change of Address database that retains change of address information (NCOA Database). If the
- 30              claimant or taxpayer’s name and last known address in DES’s official records match the claimant
- 31              or taxpayer’s name and previous mailing address contained in the NCOA database, the new address
- 32              in the NCOA database is the taxpayer’s last known address. This rule incorporates the United States
- 33              Postal Service’s National Change of Address Database by reference and includes subsequent
- 34              amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of
- 35              the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and can be
- 36              obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A
- 37              .0201.

1 ~~(32)~~(33) “Legal representative” means a licensed attorney or a person supervised by a licensed attorney.

2 ~~(33)~~(34) “Liable state” means any state against which a claimant files a claim for benefits through another  
3 state.

4 ~~(34)~~(35) “Observation interval” means an interval of time including the four consecutive calendar years  
5 preceding the calendar year in which an application for a seasonal determination is made pursuant  
6 to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities  
7 have changed, the observation interval may be less than four calendar years.

8 ~~(35)~~(36) “Party with appeal rights” means a party who has the right to appeal an unfavorable determination  
9 or decision pursuant to G.S. 96-4(q) and G.S. 96-15.

10 ~~(36)~~(37) “Public employment office” means a local office managed and operated by the Division of  
11 Workforce Solutions (DWS) of the North Carolina Department of Commerce.

12 ~~(37)~~(38) “Regularly recurring” means a period or periods of operational activity and shall be deemed  
13 regularly recurring if, during at least seventy-five percent of the calendar years in the observation  
14 interval, the beginning and ending dates of the period or periods do not vary more than four weeks.

15 ~~(38)~~(39) “Reopened claim” means the resumption of a valid initial claim following a break in filing weekly  
16 certifications during a benefit year and the break was caused by reasons other than intervening  
17 employment. The first week of eligibility following the effective date of the reopened claim shall  
18 constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.

19 ~~(39)~~(40) “Reporting cycle” means the fifty-two week period beginning August 1<sup>st</sup> and ending July 31<sup>st</sup> the  
20 following year in which the employer’s account is examined and recorded for any inadequate  
21 responses to Requests for Separation Information (NCUI 500AB).

22 ~~(40)~~(41) “State” means any of the 50 states in the United States and includes the District of Columbia, Puerto  
23 ~~Rico~~ Rico, and the U.S. Virgin Islands.

24 ~~(41)~~(42) “Wages paid” means both wages actually received by a worker, and wages “constructively paid.”  
25 Wages are constructively paid when they are credited to the account of, or set apart for a worker  
26 without any substantial restriction as to the time or manner of payment or condition upon which  
27 payment is to be made, and shall be made available so that the worker may draw upon them at any  
28 time, and payment brought within the worker’s control and disposition, although not then actually  
29 reduced to possession.

30 ~~(42)~~(43) “Wages payable” means wages earned but not paid.

31 ~~(43)~~(44) “Weekly period” means a seven day period beginning at 12:00 a.m. Sunday and ending on the  
32 following Saturday at 11:59 p.m.

33 ~~(44)~~(45) “Week of unemployment” includes any week of unemployment as defined in the law of the liable  
34 state from which benefits for the week are claimed.

35  
36 *History Note:* Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20;  
37 *Eff. July 1, 2015;*

- 1            *Temporary Adoption Eff. March 1, 2016;*
- 2            *Temporary Adoption Expired December 10, 2016;*
- 3            *Amended Eff. April 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Division of Employment Security

RULE CITATION: 04 NCAC 24B .0107

**DEADLINE FOR RECEIPT: Thursday, March 9, 2017**

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Lines 10, 17, 24, and 32; page 2, line 27, replace "must" with "shall". As this will be a change since publication, also add "with changes" between "adopted as" and remove all underlining, except for "shall." The deleted "must" should be struckthrough, but no highlighting as this rule is an adoption.*

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

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Wednesday, February 22, 2017

1 04 NCAC 24B .0107 is adopted as published in 31:12 NCR 1227 as follows:

2

3 **04 NCAC 24B .0107 VALID JOB CONTACTS**

4 (a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall actively  
5 seek work and make the minimum valid job contacts per week as required under G.S. 96-14.9(e).

6 (b) For job contacts conducted on an employer's or employment website:

7 (1) a valid job contact is a submitted application for a position as defined in 04 NCAC 24A .0105(7);

8 (2) each separate and distinct position requiring a separate application, even if with the same employer,  
9 shall count as a separate job contact; and

10 (3) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such  
11 proof may include the claimant's record of the name of the employer, the URL or address of the  
12 website, the job title of the position for which the claimant applied, the date of submission, and the  
13 confirmation number or email.

14 (c) For job contacts conducted by electronic mail (e-mail) or facsimile:

15 (1) a valid job contact is a message sent to a valid e-mail address or facsimile number of an employer,  
16 or their designee, for the sole purpose of obtaining employment with that employer; and

17 (2) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such  
18 proof may include the claimant's record of the name of the employer, the e-mail address or facsimile  
19 number used for the contact, the name and job title of the person contacted, and the date of the  
20 contact.

21 (d) For job contacts conducted by telephone:

22 (1) a valid job contact is a verbal conversation with an employer, or their designee, for the sole purpose  
23 of obtaining employment with that employer.

24 (2) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such  
25 proof may include the claimant's record of the name of the employer, the telephone number used  
26 for the contact, the name and job title of the person contacted, and the date of the contact; and

27 (3) a message left on an answering service or a voice-mailbox shall not be a valid job contact for  
28 purposes of G.S. 96-14.9(e)(3).

29 (e) For job contacts conducted in person:

30 (1) a valid job contact is a meeting with an employer, or their designee, for the sole purpose of obtaining  
31 employment with that employer;

32 (2) upon request by DES, each claimant must provide verifiable proof of their job contacts, and such  
33 proof may include the claimant's record of the name of the employer, the location at which the  
34 contact occurred, the name and job title of the person with whom the claimant met, and the date of  
35 the contact; and



1           (3) an in-person contact with an employer on a single day shall be considered a single contact for  
2           purposes of G.S. 96-14.9(e)(3), unless multiple applications are submitted that day for separate and  
3           distinct positions as described in Subparagraphs (b)(1) and (2) of this Rule.

4 (f) The following shall be considered invalid job contacts:

5           (1) Duplicative job contacts. A contact is duplicative when a claimant contacts the same employer  
6           regarding the same position or opening more than once during the same week with no change in the  
7           result of the contact. The following are examples of a change in the result of contact:

8           (A) a contact to or from an employer that occurs after an initial contact, involves scheduling an  
9           interview, and an interview is in fact scheduled; or

10           (B) a contact to an employer in response to a request for additional information.

11           (2) Contact with an employer for a job that the claimant would be unable to accept if offered. A “job  
12           that a claimant would be unable to accept if offered” means a position for which the claimant lacks  
13           the necessary knowledge, ability, or skill required for that job, as stated in the job posting or as  
14           required by applicable licensing authority.

15 (g) Initial registration via NCWorks shall be considered a valid job contact for the week during which the registration  
16 was completed.

17 (h) Union members.

18           (1) If a claimant customarily obtains employment through a union with a hiring hall, then weekly  
19           contact with the same shall satisfy the requirements of G.S. 96-14.9(e). Upon request by DES, each  
20           claimant shall provide verifiable proof of their job contacts, and such proof may include their union  
21           number, the address where they made contact as required by their union’s reporting requirements,  
22           the name and job title of the person with whom they spoke, and the dates on which they made  
23           contact. Claimants who are members of a union with a hiring hall shall provide information about  
24           their union’s reporting requirements to DES upon request.

25           (2) If a claimant is a member of a non-hiring hall union, then contact with the same shall be considered  
26           a single valid job contact for the week in which it occurred. Upon request by DES, each claimant  
27           must provide verifiable proof of their job contacts, and such proof may include the claimant’s record  
28           of the name of the union agent or applicable union, the address of the union or where contact was  
29           made, the name of the person with whom the claimant spoke, and the date of the contact.

30 (i) Longshoremen registered with their union satisfy the requirements of G.S. 96-14.9(e) by submitting on a weekly  
31 basis their union number, the address where they made contact as required by their union’s reporting requirements,  
32 the name and job title of the person with whom they spoke, and the dates on which they made contact. Longshoreman  
33 shall provide information about their union’s reporting requirements to DES upon request.

34 (j) An application to a blind job advertisement shall be considered a valid job contact for each separate and distinct  
35 position sought or employer contacted. In addition to the requirements set forth above in this Section, the claimant  
36 shall also retain, and provide to DES upon request, a copy of the blind advertisement. A copy of the blind

1 advertisement shall be accepted by DES in lieu of the employer name, the name of the person contacted, and the job  
2 title of the person contacted if these are unavailable.

3

4 *History Note: Authority G.S. 96-4; 96-14.9;*  
5 *Temporary Adoption Eff. March 1, 2016;*  
6 *Temporary Adoption Expired December 10, 2016;*  
7 *Amended Eff. April 1, 2017.*

1 04 NCAC 24C .0506 is amended as published in 31:12 NCR 1227 as follows:

2

3 **04 NCAC 24C .0506      CONTENT OF HIGHER AUTHORITY DECISION**

4 The Board of Review shall issue a written Higher Authority Decision that includes the following:

- 5       (1)       the names of the members of the Board of Review who participated in the review;
- 6       (2)       findings of fact, conclusions of law, and the decision of the Board of Review;
- 7       (3)       instructions for filing an appeal of the Higher Authority Decision to the superior court and the date
- 8               the Higher Authority Decision was mailed; and
- 9       ~~(4)       instructions for requesting any post decision relief or reconsideration if applicable under Rule~~
- 10       ~~.0601 of this Subchapter; and~~
- 11       ~~(5)~~ (4)       notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of
- 12               benefits resulting from any decision that is later reversed on appeal.

13

14 *History Note:      Authority G.S. 96-4; 96-11.4; 96-15;*

15                       *Eff. July 1, 2015;*

16                       *Temporary Amendment Eff. March 1, 2016;*

17                       *Temporary Amendment Expired December 10, 2016;*

18                       *Amended Eff. April 1, 2017.*

1 04 NCAC 24C .0601 is repealed as noticed in 31:12 NCR 1227 as follows:

2

3

**SECTION .0600 - POST-DECISION RELIEF**

4

**04 NCAC 24C .0601 POST-DECISION RELIEF**

6

7 *History Note: Authority G.S. 96-4; 96-11.4; 96-15;*

8 *Eff. July 1, 2015;*

9 *Temporary Repeal Eff. March 1, 2016;*

10 *Temporary Repeal Expired December 10, 2016;*

11 *Repealed Eff. April 1, 2017.*