

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce - Division of Employment Security intends to adopt the rules cited as 04 NCAC 24D .0201, .0206, amend the rules cited as 04 NCAC 24D .0102, .0202, .0203; 24F .0304, and repeal the rules cited as 04 NCAC 24D .0103-.0106; and 24F .0303.

Proposed Effective Date: *May 1, 2021*

Public Hearing:

Date: *January 19, 2021*

Time: *10 a.m.*

Location: *Teleconference: +1 (888) 204-5984 Access Code: 3069171*

Reason for Proposed Action: *G.S. § 96-11.2 provides for the allocation of charges to base period employers on a quarterly basis. The rules are repealed, amended and adopted to correctly reflect the agency's business processes in accordance with the statutory requirement. The proposed repeal of Rules 24D .0103, 24D .0104, 24D .0105, 24D .0106 are in response to changes in DES's business processes of no longer accepting requests for noncharging from the employer to the list of potential charges, and compliance with G.S. § 96-11.2. Rule 24D .0102 is proposed for amendment to accurately reflect the information on the form that DES will use to notify the employer of potential benefit charges to its account. Rule 24D .0201 is proposed for adoption to set forth the notice requirements to employers of the quarterly list of charges to the employer's account. Rule 24D .0202 is proposed for amendment to notify the employers of the requirements for filing a protest to the list of charges to the employer's account. Rule 24D .0203 is proposed for amendment to set forth the grounds requirements for protesting the benefit charges to the employer's account. Rule 24D .0206 is proposed for adoption to establish consistency with Rule 24A .0106.*

G.S. 96-4(q) provides for the manner in which the Board of Review shall conduct hearings to determine the rights, status, and liabilities of an employer. Rule 24F .0303 is proposed for repeal due to the changes in the scheduled tax hearings before the Board of Review as provided in Rule 24F .0304. Rule 24F .0304 is proposed for amendment to accurately reflect compliance with the statutory provision of G.S. 96-4(q), and to allow flexibility for the hearings. The Rule is also proposed for amendment to provide notice to the parties of their rights to object to the venue of the hearing designated by the Board of Review and the manner in which to object to the designated venue.

The comment period begins December 14, 2020 and ends March 5, 2021. Comments may be submitted to: Regina S. Adams, Rulemaking Coordinator, N.C. Department of Commerce, Division of Employment Security, Legal Services Section, P.O. Box 25903, Raleigh, NC 27611; phone (919) 707-1026; fax (919) 733-8745; email DES.Rules@nccommerce.com.

If you wish to make an objection to a proposed rule and subject the proposed rule to legislative review, please contact a staff member at the Rules Review Commission at 984-236-1850.

CHAPTER 24 - EMPLOYMENT SECURITY

SUBCHAPTER 24D - TAX ADMINISTRATION

SECTION .0100 – REQUESTS FOR NONCHARGING OF BENEFIT PAYMENTS

04 NCAC 24D .0102 NOTICE TO EMPLOYER OF POTENTIAL CHARGES

(a) DES shall notify each employer in writing of potential charges to the employer's account. The notice shall contain the:

- (1) date of the notice;
- (2) claimant's name and social security number;
- (3) date the claimant's benefit year began;
- (4) claimant's weekly benefit amount and weekly earnings allowance;
- (5) employer's reporting number used to report wages for the claimant;
- (6) base period wages reported by the employer by calendar quarter and dollar amount;
- (7) employer's percentage of total base period wages reported;
- (8) maximum potential charge amount that can be applied to the employer's experience rating account if the claimant exhausts his or her benefits;
- (9) a statement containing the employer's right to protest the notice; and
- (10) the time period within which a protest shall be filed pursuant to G.S. 96-15(b)(2), a statement containing the employer's right to notify the Division within 15 days of the mailing date of the notice if the claimant did not work for the employer or the wages are incorrect.

(b) DES shall provide notice of potential charges to the employer's account using the following forms, as applicable:

- (1) Notice of Combined Wage Claim and Potential Charges to Your Account;
- (2) Notice of Unemployment Claim, Wages Reported and Potential Charges;
- (3) Notice of Initial Claim and Potential Charges to Reimbursable Employer;
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary ~~Layoff~~; Layoff;
- (5) ~~Reversal of Previously Allowed Noncharging;~~

- ~~(6) Reversal of Previously Denied Noncharging;~~
- ~~(7) Administrative Determination Disallowing Noncharging; or~~
- ~~(8) List of Charges to Your Account.~~

History Note: Authority G.S. 96-4; 96-11.1; 96-11.2; 96-11.3; 96-11.4; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018;
Amended Eff. _____.

04 NCAC 24D .0103 REQUIREMENTS FOR REQUESTING NONCHARGING OF BENEFIT PAYMENTS

Authority G.S. 150B-21.1.

04 NCAC 24D .0104 TIME FOR FILING REQUESTS FOR NONCHARGING

Authority G.S. 150B-21.1.

04 NCAC 24D .0105 DETERMINATION ON REQUESTS FOR NONCHARGING

Authority G.S. 150B-21.1

04 NCAC 24D .0106 APPEALING DENIAL OF REQUEST FOR NONCHARGING

Authority G.S. 150B-21.1

SECTION .0200 - ACCOUNT CHARGE PROTESTS

04 NCAC 24D .0201 NOTICE OF EMPLOYER QUARTERLY CHARGES

DES shall notify each employer in writing of the quarterly list of charges to the employer's Account using Form NC CLM 626-9 that shall contain the:

- (1) date of the notice;
- (2) charging quarter ending date;
- (3) employer's name and mailing address;
- (4) claimant's name and social security number;
- (5) date the claimant's benefit year began;
- (6) employer's reporting number used to report wages for the claimant;
- (7) benefit charges to the employer for each listed claimant; and
- (8) a statement containing the employer's right to protest the list of charges.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-1.5; 96-15;
Adoption Eff. _____.

04 NCAC 24D .0202 REQUIREMENTS FOR FILING PROTESTS TO LIST OF CHARGES

~~(a) An employer who protests the benefit charges to its account shall make the protest in writing within ~~45~~ 30 days of the mailing date of the notice of potential charges Form NC CLM 626-9 to DES's Claims Unit in accordance with 04 NCAC 24A .0104(s), and shall list all grounds for the protest as prescribed under Rule .0203 of this Section.~~

~~(b) Any of the following forms, when completed with the information indicated in Paragraph (a) of this Rule, shall constitute compliance with this Rule:~~

- ~~(1) Notice of Initial Claim and Potential Charges to Your Account; and~~
- ~~(2) Notice of Combined Wage Claim and Potential Charges to Your Account.~~

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .0103 Eff. March 1, 2017;
Amended Eff. October 1, 2017;
Amended Eff. _____.

04 NCAC 24D .0203 GROUNDS FOR PROTESTING LIST OF CHARGES

An employer shall only file protests ~~for the following reasons:~~ for:

- (1) the reasons set forth in G.S. 96-11.3;
- ~~(1)(2)~~ clerical errors in the list of charges;
- ~~(2)(3)~~ charges resulting from individuals who were never employed by the employer; or
- ~~(3)(4)~~ the claimant has new separation from employment occurring between the date that the claimant's benefit year began and the last week ending date for which the claimant was paid benefits, and a base period employer did not have an opportunity to request noncharging on the subsequent separation.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .0105 Eff. March 1, 2017;
Amended Eff. October 1, 2017;
Amended Eff. _____.

04 NCAC 24D .0206 TIME FOR FILING PROTESTS AND APPEALS

The provisions of 04 NCAC 24A .0106 shall apply in determining the timeliness of protests and appeals.

History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;
Adoption Eff. _____.

SUBCHAPTER 24F – BOARD OF REVIEW

SECTION .0300 – TAX LIABILITY HEARINGS

04 NCAC 24F .0303 TELEPHONE HEARINGS BEFORE THE BOARD OF REVIEW

Authority G.S. 150B-21.1.

04 NCAC 24F .0304 IN-PERSON HEARINGS

~~(a) A party shall only request an in-person hearing at the time the appeal is filed in writing, or by filing a written objection to the telephone conference call, received at least seven days before the scheduled hearing.~~

(a) Hearings shall be conducted in person by the Board of Review, or a Board designee, at the Office of the Board of Review in Raleigh, N.C.

~~(b) If travel is required to conduct the in-person hearing, the objecting party shall travel to a location convenient to the non-objecting party, as determined by the Board of Review.~~

(b) Upon good cause, as defined in 04 NCAC 24A .0105(28), the Board of Review may designate alternate means of hearing.

(c) A party may object to the venue of hearing designated by the Board. The Board will consider such objection if it is filed with the Board within the 10 days of the issuance of a notice of hearing. The objection must be in writing and provide good cause as to the reason for a request in a change of venue.

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1104 Eff. October 1, 2017;
Amended Eff. _____.