

**Note from the Codifier:** The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

## TITLE 04 – DEPARTMENT OF COMMERCE

*Notice is hereby given in accordance with G.S. 150B-21.1 that the Division of Employment Security intends to adopt the rule cited as 04 NCAC 24G .0104.*

**Codifier of Rules** approved this rule as an emergency rule effective June 26, 2020 and received for publication the following notice and proposed temporary rule on June 18, 2020.

### **Public Hearing:**

**Date:** July 7, 2020

**Time:** 10:00 a.m.

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

**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, 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; and Executive Order No. 118, Governor Roy Cooper, 2020; Executive Order No. 121, Governor Roy Cooper, 2020; N.C. Session Law 2020-3.

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. 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; 116-136). The legislation makes emergency supplemental appropriations in response to the spread of COVID-19 and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA) at Division D. EUISSA sets forth 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.

The Governor's Executive Order No. 121, issued on March 27, 2020, ordered that all non-essential businesses and operations cease operating effective March 30, 2020. The employer entities ceased operations and laid off its employees pursuant to the Governor's Executive Order. Currently, the Governor is reopening the state's economy in phases and easing COVID-19 restrictions; the employer entities are reopening and are recalling employees to return to work. Furthermore, N.C. Session Law 2020-3 made changes to Chapter 96 of the North Carolina statutes. Part of the law, codified as G.S. 96-14.15, provides for flexibility to DES to administer the unemployment compensation to unemployed individuals in response to the coronavirus emergency.

**Comment Procedures:** Comments from the public shall be directed to: Regina S. Adams, N.C. Department of Commerce, Division of Employment Security, Post Office Box 25903, Raleigh, NC 27611; phone 919-707-1026; fax 919-715-7194; email des.rules@nccommerce.com. The comment period begins July 1, 2020 and ends July 23, 2020.

## SUBCHAPTER 24G – UNEMPLOYMENT COMPENSATION DUE TO PUBLIC HEALTH EMERGENCY OR DISASTER DECLARATION

### SECTION .0100 - UNEMPLOYMENT COMPENSATION DUE TO CORONAVIRUS AND COVID-19

#### **04 NCAC 24G .0104      TEMPORARY COVID-19 SUITABLE WORK PROVISIONS**

A claimant who has refused suitable work for one of the following COVID-19 related reasons will be deemed to have a legally sufficient reason for the refusal, and may continue to be eligible for unemployment benefits:

- (1) The claimant has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and has been advised by a medical professional to not attend work.
- (2) A member of the claimant's household has been diagnosed with COVID-19 or the claimant is providing care for a family member who has been diagnosed with COVID-19.
- (3) The claimant is high risk of severe illness from COVID-19. The Centers for Disease Control and Prevention (CDC) defines a high-risk individual as a person 65 years of age or older, or a person of any age, who has serious underlying

- medical conditions including being immunocompromised, or has chronic lung disease, moderate-to-severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease and undergoing dialysis, or liver disease.
- (4) The claimant is the primary caregiver of a child or person in the claimant's household who is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency, and the school or facility is required for the claimant to work.
  - (5) The claimant is unable to report to the claimant's place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency or the claimant has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
  - (6) In order to comply with any governmental order regarding travel, business operations and mass gatherings, the claimant must refuse an offer of suitable work.
  - (7) The claimant reasonably believe there is a valid degree of risk to the claimant's health and safety due to a significant risk of exposure or infection to COVID-19 at the employer's place of business due to a failure of the employer to comply with guidelines as set out by the CDC, other governmental authorities or industry groups as may be found in CDC guidance, the Governor's Executive Orders, or other binding authority; or due to objective reasons that the employer's facility is not safe for the claimant.

Authority G.S. 96-2; 96-4; 96-15(a); 150B-21.1A; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-27; Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020; E.O. 121, Governor Roy Cooper, 2020.