

TEMPORARY RULE
RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Department of Commerce, Division of Employment Security

RULE CITATION: 04 NCAC 24G .0104

RECOMMENDED ACTION:

X Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

COMMENT:

In May 2020, Session Law 2020-3 was enacted. The Session Law included a provision relating to unemployment benefits and COVID-19. It is unclear to staff whether the language in the Session Law refers to the initial payment and qualification for benefits or whether the Session Law applies to the qualification for benefits throughout the benefit period.

The proposed Rule only relates to the payment of benefits after initial qualification; therefore staff recommends approval if the Session Law only governs initial payment and qualification. Staff presents the question on the reading of the Session Law for consideration by the RRC. On all other grounds, staff recommends approval of the Rule.

Staff asked the agency to provide a response to the Session Law. The agency's response and the text of the Session Law are attached.

Ashley Snyder
Commission Counsel

Agency Response to Session Law:

N.C. Session Law 2020-3 applies for the purpose of establishing a benefit year for the claimant's initial claim for unemployment benefits. The Rule applies to a claimant who has established a benefit year and the claimant's continued eligibility for unemployment benefits. Since the business entities are slowly reopening, the employer is recalling its employees back to work. The Rule is necessary for the claimant's continued eligibility for benefits by determining if the claimant had good cause for refusing suitable work offered by the employer. The Employment Security Law provides in N.C. Gen. Stat. § 96-14.11(b) that a claimant may be disqualified for any remaining benefits if the Division determines that the claimant has failed without "good cause" to accept suitable work offered by the employer for the specified reasons indicated in the statute. The Rule further defines the "good cause" requirement in 96-14.11(b) by providing a list of provisions that constitute good cause in the COVID-19 context that would not disqualify the claimant from any remaining benefits if the claimant refused suitable work offered by the employer.

SESSION LAW 2020-3

FLEXIBILITY TO ADMINISTER UNEMPLOYMENT COMPENSATION AND SUTA TAX CREDIT

SECTION 1.2.(a) Chapter 96 of the General Statutes is amended by adding a new section to read:

"§ 96-14.15. Emergency unemployment benefits and tax credit to respond to the coronavirus emergency of 2020.

(a) Benefits Payable. – Unemployment benefits are payable in response to the coronavirus emergency in any of the following circumstances:

- (1) An employer temporarily ceases operations due to the coronavirus, preventing the individual from going to work.**
- (2) An employer reduces the hours of employment due to the coronavirus.**
- (3) An individual has a current diagnosis of the coronavirus.**
- (4) An individual is quarantined at the instruction of a health care provider or a local, State, or federal official.**

(b) Exceptions Allowed. – The provisions of this Chapter apply to benefits payable under this section except as follows:

- (1) Waiting week. – No waiting week applies to a claim for unemployment under this section.**
- (2) Work search. – The work search requirements do not apply to an individual who is eligible for unemployment under this section.**
- (3) Non-charging. – Benefits paid to an individual under this section are not charged to the account of any base period employer of the individual.**
- (4) Attached claim. – An employer may file an attached claim for benefits allowed under this section. The restrictions for filing an attached claim under G.S. 96-15(a1) do not apply to an employer-filed claim under this section and a claim filed by an employer under this section is not an attached claim filed under G.S. 96-15(a1).**

(c) Tax Credit. – An employer is allowed a tax credit for a contribution to the Unemployment Insurance Fund payable under G.S. 96-9.2 for contributions due for the calendar year 2020. The amount of the credit is equal to the amount of contributions payable on the report filed by the employer on or before April 30, 2020.

If an employer remitted the contributions payable with the report due on or before April 30, 2020, the credit will be applied to the contributions payable on the report due on or before July 31, 2020. An employer must file the report to receive the credit. If the amount of the credit exceeds the amount of contributions due on the report, the excess credit amount is considered an overpayment and will be refunded pursuant to G.S. 96-9.15(b).

(d) Coronavirus. – For purposes of this section, the term "coronavirus" has the same meaning as defined in section 506 of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.

(e) Applicability. – This section applies for unemployment benefits filed for periods beginning on or after March 10, 2020, and expires for unemployment benefits filed for periods beginning on or after the earlier of the following: (i) the date the Governor signs an executive order rescinding Executive Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19, or (ii) December 31, 2020."

SECTION 1.2.(b) Notwithstanding G.S. 96-14.9, an individual may meet the reporting requirements of that section by telephone or via the Internet for the period beginning March 10, 2020, and ending on the earlier of the following: (i) the date the Governor signs an executive order rescinding Executive Order No. 116, Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19, or (ii) December 31, 2020.

SECTION 1.2.(c) This section is effective when it becomes law.

04 NCAC 24G .0104 is adopted under temporary procedures with changes as follows:

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

For purposes of determining good cause in G.S. 96-14.11(b), A a claimant who has refused suitable work for one of the following COVID-19 related reasons will shall be deemed to have a legally sufficient reason for the refusal, and may continue to be eligible for unemployment benefits: benefits while the applicable requirement of the following is met:

~~(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)~~(1) A member of the claimant's household has been diagnosed with COVID-19 or the claimant is providing care for a family member immediate family, as defined in G.S. 96-1(b)(18), who has been diagnosed with COVID-19.

~~(3)~~(2) 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. The claimant is high risk of severe illness from COVID-19 in accordance with the Centers for Disease Control and Prevention (CDC) guidelines. The CDC guidelines for COVID-19 Risk are incorporated by reference, including subsequent amendments or editions. This document may be accessed at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> at no cost.

~~(4)~~(3) The claimant is the primary caregiver of a child or person in the claimant's household who is unable to attend school that is closed for full-time instruction or the student is enrolled in virtual learning or another facility that is closed has shut down as a direct result of the COVID-19 public health emergency, and the school or facility is required for the claimant to work. For purposes of this requirement, a facility is defined as a place that provides ongoing and constant care or attention to the child or other person being cared for, for example, a daycare facility, assisted living facility, rehabilitation center, or nursing home.

~~(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)~~(4) In order to comply with any governmental order regarding travel, business operations and mass gatherings, the claimant must refuse an offer of suitable work. The claimant has refused work in order to comply with travel, business operations, or mass gathering requirements set forth in a current executive order issued by the President of the United States, Governor of the State of

1 North Carolina, or contained in an order issued by the North Carolina county or municipality in
2 which the claimant resides.

3 (7)(5) The claimant presents clear and convincing evidence as defined in Rule .0105(a)17) of this
4 Section reasonably believes that there is a valid degree of risk to the claimant's health and safety
5 due to a significant risk of exposure or infection to COVID-19 at the employer's place of business
6 due to a failure of the employer to comply with COVID-19 related statutes, executive orders,
7 ordinances, and guidelines as set out by the CDC and Occupational Safety and Health
8 Administration (OSHA). The OSHA guidelines for employers are incorporated by reference,
9 including subsequent amendments or editions. This document may be accessed at
10 <https://www.osha.gov/Publications/OSHA4045.pdf>. at no cost. The CDC guidelines for employers
11 are incorporated by reference, including subsequent amendments or editions. This document may
12 be accessed at [https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html)
13 [response.html](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html) at no cost. other governmental authorities or industry groups as may be found in
14 CDC guidance, the Governor's Executive Orders, or other binding authority; or due to objective
15 reasons that the employer's facility is not safe for the claimant. The employer's failure to adhere to
16 the COVID-19 related statutes, executive orders, ordinances, and guidelines as set out by the CDC
17 and OSHA shall constitute good cause for refusal of suitable work.

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19 *History Note:*

Authority G.S. 96-2; 96-4; 96-14.11(b); 96-15(a); 150B-21.1A; 166A-19.30; Families
First Coronavirus Response Act, Pub. L. No. 116-127, Division D, § 1402 (2020); U.S.
Department of Labor in Unemployment Insurance Program Letter (UIPL) Nos. 16-20
(issued April 5, 2020) and 13-20 (issued March 22, 2020); E.O. 118, Governor Roy
Cooper, 2020; E.O. 121, Governor Roy Cooper, 2020;
Emergency Adoption Eff. June 18, 2020 June 26, 2020;
Temporary Adoption Eff. _____.