



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. 0104 -Temporary COVID-19 Suitable Work Provisions

3. **Action:** Adoption Amendment Repeal

4. **Was this an Emergency Rule:** Yes No **Effective date:** June 26, 2020

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** June 18, 2020
- b. **Proposed Temporary Rule published on the OAH website:** June 25, 2020
- c. **Public Hearing date:** July 7, 2020
- d. **Comment Period:** July 1 through July 23, 2020
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** June 22, 2020
- f. **Adoption by agency on:** August 6, 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]:** September 1, 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:
Effective date:
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: The temporary rule is needed because of a serious and unforeseen threat to the public health, safety and welfare, recent act of the U.S. Congress with the passage of the Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D § 1402 (2020); Executive Order 118 issued by Governor Roy Cooper on March 17, 2020; and guidance from the U.S. Department of Labor 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). 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). 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 (EUISAA) at Division D.

The Governor's Executive Order No. 121 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 slowly reopening and are recalling employees to return to work. This rule is necessary for the determination of whether to continue unemployment benefits for individuals who refuse suitable work after being informed by the employer to return to work.

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

Due to the public health threat posed by COVID-19, the Governor's Executive Order No. 121 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. *See Executive Order 155*. The immediate adoption of the rule is necessary for the determination of whether to continue unemployment insurance benefits for individuals who refuse to return to work after being recalled by the employer.

During the time of this public health emergency, it is in the public's interest to immediately adopt the rule to limit the exposure to COVID-19 in the workplace when employers recall their employees to work. The rule establishes provisions that protect the workplace and the public by allowing employees to not return to work if the employees are exposed to COVID-19 in the workplace due to the employers' failure to comply with COVID-19 related guidelines; if the employees are diagnosed with COVID-19; and/or have existing health conditions that places them at risk to illness from COVID-19. The rule is necessary for the public interest to provide guidelines for the Division's employees who are tasked with making a determination/decision regarding the claimant's continued eligibility for unemployment benefits when recalled to work by the employing entity. The rule is also necessary for the public interest for the protection of the employers' account charged with claimants' receipt of unemployment benefits, the prevention of fraudulent claims filed by claimants, and the prevention of the payment of claims to individuals not entitled to unemployment benefits.

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

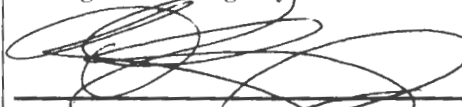
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10. Signature of Agency Head*:



* 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
N.C. Department of Commerce, Division of Employment Security

E-Mail: assistantsecretary@nccommerce.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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.

18
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. _____.