

**BEFORE THE DELAWARE DEPARTEMENT OF LABOR,
DIVISION OF UNEMPLOYMENT INSURANCE**

**THIRD EMERGENCY RULES AMENDING THE DELAWARE
UNEMPLOYMENT INSURANCE CODE PURSUANT TO FIRST
MODIFICATION OF STATE OF EMERGENCY DECLARATION**

WHEREAS, the Centers for Disease Control and Prevention has determined that a novel coronavirus (“COVID-19”) presents a serious public health threat; and

WHEREAS, on March 12, 2020, Governor John Carney issued a State of Emergency in Delaware due to the public health threat of COVID-19, which became effective as of Friday, March 13, 2020 at 8:00 a.m. E.S.T., and shall continue until terminated as provided under state law (the “State of Emergency”); and

WHEREAS, on March 16, 2020, Governor Carney issued a First Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat, pursuant to Title 20, Chapter 31 of the Delaware Code, which modified the previously issued State of Emergency declaration and provided that:

“The Delaware Secretary of Labor is authorized to develop emergency rules, amending the Delaware Unemployment Insurance Code, effective Monday, March 16, 2020, such emergency rules to remain in effect until the State of Emergency declaration has been rescinded. These rules should enhance the flexibility of the unemployment insurance program in response to COVID-19, and alleviate some of the burden of temporary layoffs, isolation, and quarantine by ensuring unemployment benefits are available to individuals whose employment has been impacted directly by COVID-19.”; and

WHEREAS, the First Modification also limited public gatherings to 50 people, provided all restaurants, bars and taverns could only provide food and beverage service through take-out, drive through or off premises delivery, and required casinos to cease gaming operations; and

WHEREAS, on March 18, 2020, Governor Carney issued a Second Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Second Modification”), which reiterated the emergency rulemaking authorization to the Delaware Secretary of Labor that was in the First Modification, and also required bowling alleys, concert events, movie theaters, sports facilities, fitness centers, and health spas to cease operations; and

WHEREAS, through subsequent modifications of the State of Emergency, all non-essential businesses were required to cease operations; and

WHEREAS, on March 19, 2020, President Trump signed into law the Families First Coronavirus Response Act, including the Emergency Unemployment Insurance Stabilization and Access Act of 2020, which grants the states broad flexibility to modify state unemployment laws and policies on an emergency temporary basis as needed to respond to COVID-19; and

WHEREAS, on March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act, which provides stimulus funds and extended and supplemental unemployment benefits to a variety of employees and other workers; and

WHEREAS, in the interest of protecting the citizens of Delaware who may experience economic hardships related to the impact of COVID-19, the Department of Labor finds that the adoption of the following emergency rules is necessary to enhance the flexibility of Delaware’s unemployment insurance program to provide cash assistance to many Delaware workers whose employment has been impacted directly by COVID-19 and who would not typically qualify for benefits.

NOW, THEREFORE, IT IS ORDERED, effective the 16th day of March, 2020:

1. Payments received by individuals from any loan or grant provided to their employer or themselves from the Small Business Administration’s Paycheck Protection Program (the “PPP”) are to be treated as “wages” under the Delaware Unemployment Code and should be reported when you

file your weekly claim certification for any benefits administered by the Division, whether or not you are performing work during the weeks you receive PPP payments.

2. Title 19, Section 3325(c)(2) is rescinded. For fraud overpayments established by final decision on or after August 29, 2019, the Department of Labor may choose to deduct the remaining balance of any fraud overpayment due to the Department of Labor, Division of Unemployment Insurance, from future benefits payable to the individual under Title 19, Chapter 33 or any federal program of unemployment benefits or pandemic unemployment assistance benefits, with 100% of the payable weekly benefit amount being deducted from the subsequent awarded benefits, or the maximum percent deduction allowable under federal law, until the fraud overpayment established on or after August 29, 2019, is completely repaid.

These emergency rules are promulgated by the Department of Labor pursuant to the authority granted to the Governor in Title 20, Chapter 31, including the ability of the Governor to designate or appoint a state agency to make, amend and rescind orders, rules and regulations necessary for emergency management purposes, which rules shall have the full force and effect of law. By the First Modification, the Governor authorized the Department of Labor to promulgate these emergency rules. All existing laws, ordinances, rules or regulations that are inconsistent with these emergency rules shall be suspended during the period of the State of Emergency to the extent that a conflict exists. These emergency rules, unless modified or amended by additional emergency rules, shall remain in effect until the State of Emergency declaration has been rescinded. The Secretary of the Department of Labor reserves the right to issue additional emergency rules and to modify or amend these emergency rules, pursuant to the rule-making authority granted in the First Modification.

IT IS SO ORDERED, effective the 16th day of March, 2020.



Cerron Cade
The Secretary of the Delaware Department of Labor