

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

**ELEVENTH EMERGENCY RULES AMENDING THE DELAWARE
UNEMPLOYMENT INSURANCE CODE PURSUANT TO 29 DEL.C. § 8503**

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Monday, March 16, 2020, such emergency rules to remain in effect until the State of Emergency declaration has been rescinded.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 May 8, 2020, Governor Carney issued a Second Extension of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Second Extension”), which extended the State of Emergency to May 31, 2020; and

WHEREAS, on May 31, 2020, Governor Carney issued the Twentieth Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Twentieth Modification”), which extended the emergency rulemaking authorization granted to the Delaware Secretary of Labor that was in the First Modification through July 2, 2020; and

WHEREAS, on June 6, 2020, Governor Carney issued a Third Extension of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Third Extension”), which extended the State of Emergency to July 6, 2020; and

WHEREAS, on June 30, 2020, Governor Carney issued the Twenty-Third Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Twenty-Third Modification”), which extended the emergency rulemaking authorization granted to the Delaware Secretary of Labor that was in the First Modification until the State of Emergency is rescinded; and

WHEREAS, on July 6, 2020, Governor Carney issued a Fourth Extension of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Fourth Extension”), which extended the State of Emergency to August 5, 2020; 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, on July 16, 2020, the General Assembly modified 29 *Del.C.* § 8503 to codify the rulemaking authority of the Secretary of Labor contained in the Twenty-Third Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Twenty-Third Modification”). Section 8503 as enacted states:

“The Secretary is authorized to develop emergency rules amending the Delaware Unemployment Insurance Code which 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.”

This section is effective until March 31, 2021; and

WHEREAS, since the rulemaking authority was codified by the General Assembly, on September 3, 2020, Governor Carney issued the Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (the “Twenty-Seventh Modification”), which rescinded all prior State of Emergency modifications regarding the emergency rulemaking authorization granted to the Delaware Secretary of Labor; 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:

1. Effective August 29, 2020 through March 31, 2021, the Eighth Emergency Rules are amended as follows (*deletions shown in strikethrough and additions shown in underline*):

Section 3326 of Title 19 of the Delaware Unemployment Code is hereby amended as follows:

(a)(2)d. There is a state “on” indicator for a week beginning after August 29, 2020 ~~September 19, 2020~~, if:

1. The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equaled or exceeded 6.5 percent, and

2. The average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in paragraph (a)(2)d.1. of this section, equals or exceeds 110 percent of such average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

(a)(3)d. There is a state “off” indicator for a week beginning after August 29, 2020 ~~September 19, 2020~~, if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (a)(2)d.1. or paragraph (a)(2)d.2. of this section was not satisfied.

(f)(3) Effective with respect to the weeks beginning in a high unemployment period, section (e) of this section shall be applied by substituting:

- a. “Eighty percent” for “fifty percent” in paragraph (e)(1) of this section, and
- b. “Twenty” for “thirteen” in paragraph (e)(2) of this section.

(f)(4) For purposes of paragraph (f)(3) of this section, the term “high unemployment period” means any period during which an extended benefit period would be in effect if paragraph (a)(2)d.1. of this section were applied by substituting “8 percent” for “6.5 percent.”

These emergency rules are promulgated by the Department of Labor pursuant to the authority granted to the Secretary of Labor by the General Assembly in 29 *Del.C.* § 8503. During the period of time 29 *Del.C.* § 8503 is in effect, all existing laws, ordinances, rules or regulations that are inconsistent with these emergency rules shall be suspended, to the extent that a conflict exists. These emergency rules shall remain in effect until March 31, 2021, unless modified or amended by additional emergency rules. 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 29 *Del.C.* § 8503.

IT IS SO ORDERED, the 7th day of October, 2020.



Cerron Cade
The Secretary of the Delaware Department of Labor