

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

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

WHEREAS, the Centers for Disease Control and Prevention 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 continued until terminated as provided under state law (the “State of Emergency”); and

WHEREAS, thereafter, Governor Carney issued several orders extending the State of Emergency successive months; 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Monday, March 16, 2020, such emergency rules to remain in effect until the State of Emergency declaration has been rescinded.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 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 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 was rescinded; 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 granted 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 provided 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 stated:

“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 was effective until March 31, 2021; and

WHEREAS, 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, on December 27, 2020, President Trump signed into law the Continued Assistance Act, which extended the duration of the pandemic-related extended and supplemental unemployment benefits to a variety of employees and other workers, and altered the eligibility and documentation requirements for those benefits; and

WHEREAS, on February 8, 2021, the General Assembly extended the duration of the prior modification of 29 *Del.C.* § 8503 to codify the rulemaking authority of the Secretary of Labor. Section 8503 as enacted stated:

“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 was effective until March 31, 2022; and

WHEREAS, on January 27, 2022, the General Assembly extended the duration of the prior modification of 29 *Del.C.* § 8503 to codify the rulemaking authority of the Secretary of Labor. 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 currently effective until December 31, 2022; and

WHEREAS, on March 12, 2021, President Biden signed into law the American Rescue Plan Act, which further extended the duration of the pandemic-related extended and supplemental unemployment benefits to a variety of employees and other workers, and acknowledged the negative economic effects the pandemic had on the unemployed, underemployed and impacted industries and provided funds to address those negative impacts; and

WHEREAS, the Governor has continued to issue orders declaring a public health emergency in Delaware; and

WHEREAS, in the interest of assisting the citizens of Delaware whose employment has been impacted directly by COVID-19, and the self-employed and businesses in Delaware that have experienced loss of revenue and financial impacts from COVID-19, the Department of Labor (the “Department”) finds that the adoption of the following emergency rules is necessary to enhance the flexibility of Delaware’s unemployment insurance program.

NOW, THEREFORE, IT IS ORDERED:

1. The Secretary of Labor issued the following rules in the First Emergency Rules, which were effective March 16, 2020, regarding temporary waivers of the “able and available” requirements in the Delaware Unemployment Code in certain situations:

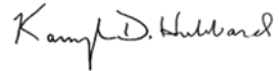
- a. “The Division hereby waives able and available requirements during the State of Emergency for claims filed as a result of COVID-19 if the claimant is unable to work due to illness, self-isolate, quarantine or the need to care for a family member (parent, spouse or child). Individuals are expected to take reasonable precautions to preserve their health so they are able to return to work once work becomes available.”
- b. “The Division hereby waives able and available requirements for parents required to care for children while school is not in session due to the State of Emergency. Individuals are expected to take reasonable precautions to preserve their health so they are able to return to work once school is in session.”

These rules temporarily waiving the “able and available” requirements were removed and made no longer applicable by the Fourth Emergency Rules, effective as of May 3, 2020. The U.S. Department of Labor issued guidance that the temporary flexibilities provided to state unemployment agencies in the CARES Act in response to COVID-19 did not include waivers of the federally mandated “able and available” requirements. Therefore, the U.S. Department of Labor has mandated that the Department rescind these emergency rules completely. Accordingly, the above-cited rules that temporarily waived “able and available” requirements of the Delaware Unemployment Code in certain situations are hereby rescinded retroactively back to March 16, 2020, as mandated by U.S. Department of Labor.

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 the emergency rulemaking authority granted by the General Assembly in 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 December 31, 2022, 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 15th day of June, 2022.



Karryl Hubbard
The Secretary of the Delaware Department of Labor