

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

**TWENTY FIRST 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Monday, March 16, 2020, such emergency rules to remain in effect until the State of Emergency declaration has been rescinded.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. Revised Assessment Rate Tables and Cap in Earned Rate for Calendar Year 2023:

Notwithstanding the required computation of the employer assessment rate to be determined by the Department for the next succeeding calendar year pursuant to § 3350,

Title 19 of the Delaware Code, for calendar year 2023: (a) employers shall be assigned a basic assessment rate in accordance with the table set forth below, and (b) if the employer’s benefit wage ratio exceeds the percentage in the righthand most column of the table set forth below on the row titled “If the Employer’s Benefit Wage Ratio (%) Does Not Exceed;” the employer’s basic assessment rate shall be 5.40%; except that employers who are determined for calendar year 2022 to have the delinquency rate of assessment pursuant to 19 Del. C. § 3350(6) shall continue to be assigned the delinquency rate.

	<b>2023 - Special One Year Schedule of Rates</b>								
If the Employer's Benefit Wage Ratio (%) Does Not Exceed:	20	30	40	50	55	60	70	80	90
The Employer's Basic Assessment Rate Shall Be:	<b>0.1%</b>	<b>0.25%</b>	<b>0.50%</b>	<b>1.00%</b>	<b>2.00%</b>	<b>2.50%</b>	<b>3.50%</b>	<b>4.50%</b>	<b>5.00%</b>

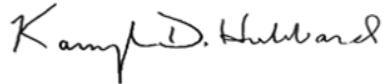
2. New Employer Rates for 2023:

Notwithstanding the required computation of the average employer assessment rate, the average industry assessment rate or the average construction industry assessment rate to be established by the Secretary of Labor for the next succeeding calendar year pursuant to subsections (a) through (c) of § 3348, Title 19 of the Delaware Code, for calendar year 2023, the average employer assessment rate, the average industry assessment rate and the average construction industry assessment rate shall each be 1 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 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 22<sup>nd</sup> day of December, 2022.



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Karryl Hubbard  
The Secretary of the Delaware Department of Labor