

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

**SIXTEENTH 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, thereafter, Governor Carney has issued orders extending the State of Emergency each successive month; 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Monday, March 16, 2020, such emergency rules to remain in effect until the State of Emergency declaration has been rescinded.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 is 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 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 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 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 March 31, 2022; 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 following emergency rule from the First Emergency Rules is hereby revised as follows (*deletions shown in strikethrough and additions shown in underline*):

“The ~~Division hereby extends~~ deadlines to respond to audits and other investigations that were extended in the First Emergency Rules until 30 days following the conclusion of the State of Emergency are hereby revised and shall be extended only until April 16, 2021. Any deadline to respond to an audit or other investigation that expired prior to April 16, 2021, is hereby extended to and must be complied with by no later than April 16, 2021. Any deadline to respond to an audit or other investigation that currently expires after April 16, 2021 is not altered by this emergency rule, as revised. Requests for extensions of audit and investigation deadlines on a case by case basis must be directed to the Division of Unemployment Insurance assigned Field Auditor directly.”

2. Effective as of the date of enactment of the Continued Assistance Act on December 27, 2020, if an individual qualifies under Section 2107(b)(4)(A) of the CARES Act (15 U.S.C. 9025(b)), as amended by Section 206 (c) of the Continued Assistance Act and any future amendments, 19 *Del.C.* § 3302(3) of the Delaware Unemployment Code is hereby amended as necessary to allow the Department to determine whether the individual is to be paid Pandemic Emergency Unemployment Compensation or regular compensation for a week of unemployment using the following method:

a. The Department shall defer the establishment of a new benefit year and put on hold the base period wages currently available for use in establishing the new benefit year, until such time as the Pandemic Emergency Unemployment Compensation payable with respect to the current benefit year has been exhausted.

3. Section 3125(c)(1) of Title 19 of the Delaware Unemployment Code is hereby amended as follows (*deletions shown in strikethrough and additions shown in underline*):

(c) (1) If any employing unit neglects or refuses to file with the Department a required report with respect to persons employed by the employing unit within ~~5~~ 15 days after the report is due, the employing unit is subject to a penalty of 15% of the total amount of contributions paid or payable by the employing unit unless 1 of the following applies:

a. If the penalty calculated under this paragraph (c)(1) is less than \$100, the penalty is \$100.

b. If the penalty calculated under this paragraph (c)(1) is more than \$450, the penalty is \$450.

4. All emergency rules issued by the Secretary of Labor and the predecessor Secretary of Labor, pursuant to the authority granted by the Governor in the State of Emergency Declarations or the General Assembly in 29 *Del.C.* § 8503, that have not been rescinded or expired by their own terms prior to the date of this emergency rule shall remain in effect until March 31, 2022, unless modified or amended by additional emergency rules or by a subsequent act of the General Assembly. However, this emergency rule does not extend any deadlines set forth in any pending emergency rules that are currently set to expire by their terms on a specific date other than March 31, 2021.

5. The following emergency rule in the First Emergency Rules is hereby rescinded and shall no longer be applicable:

“11. The Division hereby suspends or amends the provisions of the Delaware Unemployment Insurance Code dealing with extended benefits, including Section 3326 of Title 19, to the extent necessary to allow the State of Delaware and its citizens to receive the maximum benefits provided by the federal stimulus laws enacted in response to the COVID-19 pandemic, including the Families First Coronavirus Response and the Coronavirus Aid Relief and Economic Security Act.”

This emergency rule was superseded by the General Assembly in its addition of 19 *Del.C.* § 3326(m), enacted August 25, 2020.

6. The following emergency rule in the Fourteenth Emergency Rules is hereby rescinded and shall no longer be applicable:

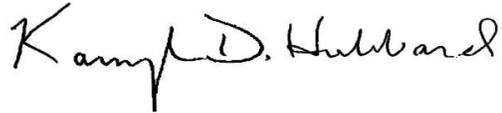
“Notwithstanding the required computation of the average employer assessment rate, the average industry assessment rate or the average construction industry assessment rate to be established by the Secretary of Labor on or before December 31, 2020 for the next succeeding calendar year pursuant to 19 Del. C. § 3348(a) through (c), for calendar year 2021, all employers assigned an assessment rate under 19 Del. C. § 3348(d) or (e) shall have a rate equal to the rate established by the Secretary of Labor for the calendar year 2020.”

This emergency rule was superseded by the General Assembly in its revisions to 19 *Del.C.* § 3348, enacted February 8, 2021.

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, 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 19th day of March, 2021.

Handwritten signature of Karryl D. Hubbard in black ink.

Karryl Hubbard
The Secretary of the Delaware Department of Labor