

# Unemployment Benefits

**COVID-19**

**Eileen Townsend, Chief of Insurance**

# NC Executive Order No. 118

On March 17, 2020 Governor Cooper signed EO to include Unemployment Insurance Benefits in Response to COVID-19.

The Department of Commerce is authorized for so long as the Declaration of a State of Emergency regarding COVID-19 remains in place, to interpret flexibility or waive, as appropriate the following:

- \* **Lifts one-week waiting period for benefits**
- \* **Removes work search requirement**
- \* **Allows employees who loose their job or where hours are reduced to apply for benefits**
- \* **Permits applicants/employees to apply for benefits remotely by phone or online**
- \* **Stipulates employers will not be held responsible for benefits paid as a direct result for COVID-19 claims**

# DES Unemployment Claims Data As of October 2020

- Claimants 1.3 million
- Payments \$8.3 million

69% Applicants Received Benefits

29% Applicants Denied Benefits

2% Applicants Pending Resolution

# Progression of UI Benefits

- **State Unemployment Benefits**
  - Maximum 12 Weeks in a Benefit Year
  - Maximum \$350 – Minimum \$15
- **Federal Pandemic Emergency Unemployment Compensation PEUC**
  - Maximum 13 weeks
  - Ends 12/26/2020
- **Federal Extended Benefits EB**
  - Maximum 6 Weeks
  - After 10/10/2020
- **Federal Pandemic Unemployment Assistance PUA**
  - Maximum 39 Weeks
  - Ends 12/26/2020

## **Increased Benefit Amount IBA**

September 6 – No Later than 12/26/2020

State Program \$50/week

Meet eligibility requirements

# List of Charges – Second Quarter 2020

- Employers recently received a list of charges to their account showing all unemployment insurance benefits paid during the second quarter of 2020.
- This is not a bill, and employers are not required to submit payment with regards to these charges. It is generated for reporting purposes for the state to seek federal reimbursement for the charges. Employers will receive a reimbursement statement in November reflecting all credits due to their account.

# Year End Benefits Charging

- Employers responding to requests for separation due to the pandemic should indicate that the separation was due to COVID-19.
- Any separation reason that is non-COVID, the employer may be charged.
- Should be tracking all COVID-19 unemployment claims. Any charges in your year-end account related to COVID-19 should be discussed with DES and removed from your year end list of charges.

# Filing a Protest for Charges

- An employer who protests the benefit charges to its account shall make the protest as follows:
- In writing within 14 days of the mailing date of the notice of potential charges;
- By mail to: DES Employer Benefit Charges/Benefit Charges Unit, P.O. Box 25903, Raleigh, North Carolina 27611-5903; or facsimile to 919-733-1126

# Employer Tax Credit

- Under North Carolina's COVID-19 Recovery Act (S.L. 2020-3), employers will receive a tax credit towards their contribution to the state's Unemployment Insurance Fund. The credit is equal to the amount of the employer's contribution due to the fund for the first quarter of 2020.
- Employers do not need to do anything to receive this credit other than to file their 1Q2020 Tax and Wage Report. Employers must file the report to receive the credit.
- Any payments made for the first quarter will automatically be applied to any contributions due for the second quarter of 2020. If the amount of the credit is higher than the contributions due, the difference will be refunded.
- Any outstanding employer bills for the first quarter of 2020 are no longer due and will be cancelled.



# Reasons for Separation

- Temporary Layoff
- Laid off/Lack of Work
- School Employee Between Semesters or Terms/Likely to Return
- School Employee Between Semesters or Terms/Not Likely to Return
- Still Employed Full Time
- Still Employed Part Time
- On Call/Temporary Status
- Still Employed Hours Reduced by Employer
- Leave of Absence
- Disaster Related Separation – COVID-19
  
- Fired/Discharged
- Retirement
- Disciplinary Separation
- Resigned
- Voluntary Quit/Separation

# Responding to Claims

- **Substitute employees**, not eligible for unemployment benefits under NCGS 96-15.01 (d); you may want to continue to respond to these claims in the same manner you currently do. (For clarification, substitutes who have been working on a regular basis and you believe should receive benefits, you can choose COVID-19 on the first screen)
- Move an employee from **full time to part time** work, choose “Disaster Related Separation” and include explanation that only part time work is available.
- Employees losing part of their **dual employment**, choose “Disaster Related Separation” and include that only half time work is available.
- If you are offering employee **other work assignments** and they refuse your offer, you may want to choose “Still Employed, Full Time, Part Time or Hours Reduced.” Should you choose “Disaster Related Separation??” Employee refusing work should be disqualified from benefits, **but** it depends on the facts.
- You can always **appeal** a claim in the same manner that you currently practice.

# In Between Terms

- Reasonable Assurance

Benefits are not payable to an individual for services performed by instructional, research, or principal administrative employees of educational institutions during the period between two successive academic years or terms with reasonable assurance of returning.

Reasonable Assurance may include a contract, written or oral agreement.

Reasonable Assurance of returning when schools resumes will be considered.

Whether or not a person has previously worked for the same educational facility may also be considered.

# Attached Claim

Attached claim is a claim filed by an employer on behalf of an employee who has been temporarily laid off or who has worked less than 60% of their customary scheduled full-time hours.

Executive Order No. 131 provides flexibility on the enforcement of some of the normal requirements for filing attached claims. Under the order:

- An employer does not need to prepay the cost of the unemployment benefits for their employees at the time the attached claim is filed.
- Employers may file attached claims for a period of more than six weeks of benefits.
- Employers may submit an attached claim for an employee more than once in a year.
- Employers do not need to have a positive credit balance with DES to file attached claims.
- The Order is effective for attached claims filed as of April 1, 2020.

**Tool for employers and assists DES to know when employers resume operations and work is available.**

# Health Insurance and Unemployment

- **Option 1:** Employer manages employee premium collection
- Employer pays the full premium, (employer & employee portions) owed to the Plan
- Employer tracks and collects premiums from employees
- Employer is responsible for premium regardless of whether employee pays the premium or not
- The Plan will not honor any retroactive termination requests for employees who do not remit full payment back to employing units.
- **Option 2:** Plan invoices employees who are still eligible, but no longer in receipt of a paycheck from which the premium can be deducted
- Employer places employee in leave of absence status in eBenefits, which puts employee in a direct bill status as of the first of the following month. Plan assumes responsibility for collecting employee premiums for employees in direct bill status.
- Employers have the option of putting the employee in one of two **LOA** statuses:
- “Direct Bill: Leave of Absence – Partially Paid” – these employees are still eligible for the employer portion to be paid by the employing unit and will receive an invoice from iTEDIUM for their portion of the premium. These members will show on your monthly invoice with only the employer portion due.
- “Direct Bill: Leave of Absence – Fully Paid” – these employees are still employed but not eligible for the employer portion to be paid by the employing unit and will receive an invoice from iTEDIUM for the full premium amount. These members will show on your monthly invoice with a \$0 amount due.



WHAT  
YOU  
NEED  
TO  
KNOW

# Vacations and Severance

- An employee who receives severance pay is attached to the employer's payroll during that time and is not eligible for unemployment benefits.
- Paid Time Off (Vacation and/or Sick Pay) is not considered separation pay if the payment was issued as a result of the employer's written policy established prior to separation. Employees receiving Paid Time Off (Vacation and/or Sick Pay) under these conditions will not be disqualified from receiving benefits.

# Employee Does Not Want to Work Because they Feel Unsafe

- Eligibility for unemployment benefits is determined on a case-by-case basis.
- Typically, an employee who **quits without good cause** is not eligible for benefits.
- An employee may have **good cause to refuse to work**, and may be eligible to receive benefits, if there is a valid risk to their health and safety due to a significant risk of COVID-19 exposure or infection at the place of business.
- Employers may report to DES that employees have not returned to work when work is available. Sign into your online account at [des.nc.gov](https://des.nc.gov) and click on the form on your 'Employer Homepage' to submit information about an employee's refusal to return to work. DES will review the information to help determine the employee's eligibility for unemployment benefits.



# Changes to Business due to the Current Environment

Can an employee refuse to return to work due to changes in their work and get benefits?

- An employee may be eligible to receive unemployment benefits if there is a **substantial** change in their contract of hire and they quit their position.
- For example, if you reduce their pay by 25 to 30%, permanently change their assigned shift without their agreement, move them to a new facility with a substantially longer commute, make other drastic modifications to the type of work for which they are hired --- these examples would constitute a **substantial** change in the contract of hire.
- Minor changes, for example, moving them to a new line, requiring one or two extra hours of work a day, or changing their work location in the same facility, should not constitute a change in the contract of hire, and they should not be eligible for unemployment benefits.
- **The issue of what is substantial is fact specific and is determined on a case-by-case basis.**

# Employees Returning to Work

- You do not need to report to DES that your employees are returning to work. You may want to notify employees who have been receiving unemployment assistance that they should stop filing their Weekly Certifications for benefits. “I Do Not Wish to Certify” should stop the weekly unemployment benefits payed directly to employee.
- If employees continue to receive benefits for weeks after they return to work, they may be required to repay the benefits they were overpaid.

# Disagree with DES Decision of Eligibility for UI Benefits

The employer and employee will be notified about the determination of eligibility for benefits. Both have the right to appeal the determination if they disagree with the decision.

# State Emergency Leave Benefits

- Employees were not eligible to collect both unemployment benefits and paid State of Emergency Leave benefits (ENDED 6/15/2020).
- Employees who received both unemployment benefits and paid State of Emergency Leave benefits, will be obligated to return the unemployment benefits back to the Department of Employment Security.

# UNEMPLOYMENT FRAUD

- If you suspect an employee is committing fraud, use Fraud Reporting Form on DES Website
- Website is [www.des.nc.gov](http://www.des.nc.gov)

# Why Bother With an Appeal?

- “Don’t want to go to a Hearing?????”

Prepare

Find the Right Witnesses



- Appeals Referee’s decision is based solely on sworn testimony and evidence presented at the appeals hearing.
- If you don’t participate the hearing may go forward without you. If you filed the appeal, your appeal may be dismissed.
- This is your opportunity to present evidence and witness testimony.
- Prepare to present your case with the assumption that you will not get another opportunity.
- If you are unable to prepare or arrange the proper witnesses, make a motion to continue. If your motion is denied, you can raise that as an exception to the Appeals Referee’s decision at a later appeal.

# Hearing Etiquette

- Be Clear and Specific in your Argument
- Provide Reasons for Discharge/Dismissal
- Preserve Appeal Rights - Object
- Always Make Closing Statements – Summarize
- State Why You Believe you Should Win



# THANK YOU

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