

SUBCHAPTER 24B - BENEFITS

SECTION .0100 - CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS

04 NCAC 24B .0101 FILING A CLAIM

(a) An individual shall contact DES by internet or telephone to file a valid initial claim for benefits pursuant to 04 NCAC 24A .0104(a).

(b) Prior to receiving any benefits, the claimant shall register for work with a public employment office.

(c) Information for an initial claim shall include:

- (1) the claimant's name, social security number, address, telephone number, email address, and date of birth, and gender;
- (2) immigration status;
- (3) whether the claimant worked for the federal government or in another state during the previous two years;
- (4) whether the claimant applied for or is receiving disability payments;
- (5) whether the claimant was or will be paid vacation or severance and the time frame that the payment covers;
- (6) whether there was a policy in effect regarding paid time off prior to the claimant's separation;
- (7) whether the claimant refused work since becoming unemployed;
- (8) whether the claimant filed for or is receiving benefits under any other unemployment insurance law;
- (9) whether the claimant applied for or is receiving any type of retirement pension;
- (10) the name and complete address of the claimant's last employer;
- (11) the reason for the claimant's separation from work; and
- (12) the claimant's beginning and ending dates of employment.

History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 96-15.01; 20 CFR 602;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24B .0102 ALTERNATIVE FILING METHODS

A claimant shall file an initial claim, or a weekly certification for payment of benefits by mail, delivery service, or facsimile to DES's Central Office in Raleigh, North Carolina. A claimant shall file an initial claim, or a weekly certification for payment of benefits at a Division of Workforce Solutions public employment office throughout the State when hazardous or emergency conditions exist that prevent a DES representative from accepting the claim or weekly certification by telephone or internet due to inclement weather or declared natural disaster.

History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 20 CFR 602;
Eff. July 1, 2015.

04 NCAC 24B .0103 WEEKLY CERTIFICATIONS

(a) After a claimant files an initial claim and establishes a benefit year, the claimant shall file subsequent weekly certifications for payment of benefits by telephone, or internet on DES's website at intervals of no less than 7 and no more than 14 consecutive days for each week claimed.

- (1) Each claimant shall file weekly certifications as prescribed under 04 NCAC 24A .0104(a).
- (2) Any claimant who reports earnings that exceed the sum of his or her weekly benefit amount plus earnings allowance for three consecutive weeks shall be unable to file a weekly certification in the fourth week, and must contact DES's Customer Call Center to continue his or her claim as set forth in 04 NCAC 24A .0104(a)(1).
- (3) If at any time during the benefit year, more than 14 calendar days elapse since the claimant last filed a weekly certification, the claimant shall file an additional or reopened claim for benefits as defined in 04 NCAC 24A .0105, and shall comply with all eligibility requirements.

(b) Each claimant shall:

- (1) file claims and weekly certifications in accordance with the rules of this Chapter that includes the following:
 - (A) information required for claims filing outlined in Rule .0101 of this Section.

- (B) information required for filing weekly certification, including each claimant's full name and social security number;
- (2) inform DES of whether he or she worked during the previous calendar week;
- (3) provide information regarding all earnings before deductions (gross) for work performed during the previous calendar week;
- (4) provide information as to whether he or she received holiday, vacation, bonus, or separation pay, and the gross amount during the previous calendar week;
- (5) provide information as to whether there was a policy in effect regarding paid time off prior to the claimant's separation;
- (6) inform DES of whether he or she began receiving or whether there was a change in any type of retirement pension during the previous calendar week;
- (7) provide information regarding whether he or she applied for or received any disability payments during the previous calendar week;
- (8) provide information regarding whether he or she applied for or received workers' compensation payments during the previous calendar week;
- (9) inform DES of whether he or she applied for or received unemployment insurance compensation under the law of any state or federal government agency;
- (10) inform DES of whether he or she was physically able and available for work, during the previous calendar week;
- (11) provide information as to whether he or she looked for work, refused work, or kept a record of work search during the previous calendar week as required by G.S. 96-14.9(e)(4);
- (12) inform DES of whether he or she attended school or training during the previous calendar week, and if so, whether he or she is willing to quit school or rearrange his or her schedule to accept work;
- (13) provide information as to whether he or she has quit a job or been discharged from a job since filing a claim for unemployment benefits;
- (14) sign all forms for the valid initial claim or weekly certification that are filed in person, by mail, or delivery service; and
- (15) submit all claims and weekly certifications as required by the Employment Security Law and this Section.

History Note: Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15; 96-15.01;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24B .0104 INFORMATION TO BE PROVIDED TO CLAIMANTS FILING A NEW CLAIM

A claimant filing a new claim for benefits shall be informed that:

- (1) unemployment benefits are subject to federal and state income tax;
- (2) he or she may elect to have federal and state income tax deducted and withheld from the payment of unemployment benefits;
- (3) he or she may change a previous withholding status; and
- (4) any amounts deducted and withheld for taxes shall be only after amounts are deducted and withheld under any other provisions of the Employment Security Law.

History Note: Authority G.S. 96-4; 96-14.2;
Eff. July 1, 2015.

04 NCAC 24B .0105 ANTEDATING

A valid initial claim shall be retroactively effective to the Sunday of the calendar week during which a claimant would have filed a claim if the failure to file the claim at that time includes the following:

- (1) a notice of the time and place for filing a claim for benefits that should have been posted was not posted in the claimant's employment establishment;
- (2) the claimant's employer coerced the claimant not to file a claim for benefits and the claimant contacted an authorized representative of DES no later than 14 days following his or her last day of work;
- (3) natural disaster where the claimant works or resides; or

- (4) an invalid claim was filed in good faith in another state.

History Note: Authority G.S. 96-4; 96-14.1; 96-15;
Eff. July 1, 2015.

04 NCAC 24B .0106 SUSPENSION OF BENEFITS FOR PROBATION VIOLATORS WHO AVOID ARREST

- (a) Upon receipt of a valid court order resulting from a probation violation for absconson or willful avoidance of arrest, DES shall suspend benefits pursuant to the terms outlined by the issuing judge in the order, effective beginning on the Sunday following the effective date of the order.
- (b) Within seven days of receiving the order, DES shall provide written notice and reasons for the ineligibility for benefits to the claimant, the issuing court, and the North Carolina Department of Public Safety.
- (c) The notice shall state:
 - (1) the claimant's name;
 - (2) the claimant's address as contained in DES's official records and provided with the court order;
 - (3) the date the order was entered; and
 - (4) the effective date of the claimant's ineligibility for benefits.

History Note: Authority G.S. 15A-1345; 96-4; 96-14.1;
Eff. July 1, 2015.

04 NCAC 24B .0107 VALID JOB CONTACTS

- (a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall actively seek work and make the minimum valid job contacts per week as required under G.S. 96-14.9(e).
- (b) For job contacts conducted on an employer's or employment website:
 - (1) a valid job contact is a submitted application for a position as defined in 04 NCAC 24A .0105(7);
 - (2) each separate and distinct position requiring a separate application, even if with the same employer, shall count as a separate job contact; and
 - (3) upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the URL or address of the website, the job title of the position for which the claimant applied, the date of submission, and the confirmation number or email.
- (c) For job contacts conducted by electronic mail (e-mail) or facsimile:
 - (1) a valid job contact is a message sent to a valid e-mail address or facsimile number of an employer, or their designee, for the sole purpose of obtaining employment with that employer; and
 - (2) upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the e-mail address or facsimile number used for the contact, the name and job title of the person contacted, and the date of the contact.
- (d) For job contacts conducted by telephone:
 - (1) a valid job contact is a verbal conversation with an employer, or their designee, for the sole purpose of obtaining employment with that employer.
 - (2) upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the telephone number used for the contact, the name and job title of the person contacted, and the date of the contact; and
 - (3) a message left on an answering service or a voice-mailbox shall not be a valid job contact for purposes of G.S. 96-14.9(e)(3).
- (e) For job contacts conducted in person:
 - (1) a valid job contact is a meeting with an employer, or their designee, for the sole purpose of obtaining employment with that employer;
 - (2) upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the employer, the location at which the contact occurred, the name and job title of the person with whom the claimant met, and the date of the contact; and

- (3) an in-person contact with an employer on a single day shall be considered a single contact for purposes of G.S. 96-14.9(e)(3), unless multiple applications are submitted that day for separate and distinct positions as described in Subparagraphs (b)(1) and (2) of this Rule.
- (f) The following shall be considered invalid job contacts:
 - (1) Duplicative job contacts. A contact is duplicative when a claimant contacts the same employer regarding the same position or opening more than once during the same week with no change in the result of the contact. The following are examples of a change in the result of contact:
 - (A) a contact to or from an employer that occurs after an initial contact, involves scheduling an interview, and an interview is in fact scheduled; or
 - (B) a contact to an employer in response to a request for additional information.
 - (2) Contact with an employer for a job that the claimant would be unable to accept if offered. A "job that a claimant would be unable to accept if offered" means a position for which the claimant lacks the necessary knowledge, ability, or skill required for that job, as stated in the job posting or as required by applicable licensing authority.
- (g) Initial registration via NCWorks shall be considered a valid job contact for the week during which the registration was completed.
- (h) Union members.
 - (1) If a claimant customarily obtains employment through a union with a hiring hall, then weekly contact with the same shall satisfy the requirements of G.S. 96-14.9(e). Upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include their union number, the address where they made contact as required by their union's reporting requirements, the name and job title of the person with whom they spoke, and the dates on which they made contact. Claimants who are members of a union with a hiring hall shall provide information about their union's reporting requirements to DES upon request.
 - (2) If a claimant is a member of a non-hiring hall union, then contact with the same shall be considered a single valid job contact for the week in which it occurred. Upon request by DES, each claimant shall provide verifiable proof of their job contacts, and such proof may include the claimant's record of the name of the union agent or applicable union, the address of the union or where contact was made, the name of the person with whom the claimant spoke, and the date of the contact.
- (i) Longshoremen registered with their union satisfy the requirements of G.S. 96-14.9(e) by submitting on a weekly basis their union number, the address where they made contact as required by their union's reporting requirements, the name and job title of the person with whom they spoke, and the dates on which they made contact. Longshoreman shall provide information about their union's reporting requirements to DES upon request.
- (j) An application to a blind job advertisement shall be considered a valid job contact for each separate and distinct position sought or employer contacted. In addition to the requirements set forth above in this Section, the claimant shall also retain, and provide to DES upon request, a copy of the blind advertisement. A copy of the blind advertisement shall be accepted by DES in lieu of the employer name, the name of the person contacted, and the job title of the person contacted if these are unavailable.

History Note: Authority G.S. 96-4; 96-14.9;
 Temporary Adoption Eff. March 1, 2016;
 Temporary Adoption Expired December 10, 2016;
 Eff. April 1, 2017.

SECTION .0200 - INTERSTATE CLAIMS

04 NCAC 24B .0201 REGISTRATION FOR WORK

- (a) The agent state shall register each claimant for work:
 - (1) who files through the agent state for work; or
 - (2) upon notification of a claim filed directly with the liable state, as required by the law, regulations, and procedures of the agent state.
- (b) The registration shall be accepted as meeting the registration requirements of the liable state.
- (c) Each agent state shall report each interstate claimant who fails to meet the registration or re-employment assistance reporting requirements of the agent state to the liable state.

History Note: Authority G.S. 96-4; 96-24;
Eff. July 1, 2015.

04 NCAC 24B .0202 BENEFIT RIGHTS OF INTERSTATE CLAIMANTS

(a) If a claimant files a claim against any state, and it is determined by the state that the claimant has benefit wage credits available in the state, then claims shall be filed only against the state as long as benefit wage credits are available in that state. Once benefit wage credits become unavailable in that state, the claimant shall file claims against any other state where benefit wage credits are available.

(b) For the purposes of this Section, benefit wage credits shall be deemed to be unavailable from another state:

- (1) whenever benefits have been exhausted, terminated, or postponed for an indefinite period, or the entire period in which benefits would otherwise be payable; or
- (2) whenever benefits are affected by the applications of a seasonal restriction.

History Note: Authority G.S. 96-4; 96-15; 96-16; 96-21; 96-24; 20 CFR 616;
Eff. July 1, 2015.

04 NCAC 24B .0203 CLAIMS FOR BENEFITS

(a) Claims for benefits or waiting-period credit filed by an interstate claimant directly with the liable state shall be filed according to the liable state's procedures. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state based on consecutive claims filed.

(b) Claims shall be filed according to the agent state's regulations for intrastate claims in the same manner as provided in Rule .0101 of this Subchapter.

- (1) With respect to claims for weeks of unemployment during which a claimant was not working for his regular employer, the liable state shall accept a continued claim that is filed up to one week or one reporting period late under circumstances that it considers good cause. If a claimant files more than one reporting period late, the filing shall open an additional claim, and no continued claim for a past period shall be accepted.
- (2) With respect to weeks of unemployment during which a claimant is attached to his regular employer, the liable state shall accept any claim filed within the time applicable to claims under the law of the agent state.

History Note: Authority G.S. 96-4; 20 CFR 616;
Eff. July 1, 2015.

04 NCAC 24B .0204 DETERMINATION OF CLAIMS

(a) In connection with each claim filed by an interstate claimant, the agent state shall compile and report the facts relating to the claimant's availability for work and eligibility for benefits to the liable state.

(b) The agent state's responsibility and authority in determination of interstate claims shall be limited to investigation and reporting of relevant facts, including facts pertaining to each claimant's registration for work or reporting for re-employment assistance as required by the agent state.

History Note: Authority G.S. 96-4; 96-15; 20 CFR 616;
Eff. July 1, 2015.

04 NCAC 24B .0205 APPELLATE PROCEDURE.

(a) The agent state shall cooperate in taking evidence and holding hearings in interstate benefit claims appeals.

(b) The agent state shall conduct appeal hearings in disputed cases and determine timeliness using the liable state's laws, regulations, or policies and practices. In interstate appeals where North Carolina is the liable state, timeliness of the appeal shall be determined by provisions of the Employment Security Law, 04 NCAC 24A .0106, and any DES decisions applicable to intrastate appeals.

(c) The agent state shall conduct the hearings on appealed interstate benefit claims.

History Note: Authority G.S. 96-4; 20 CFR 616;
Eff. July 1, 2015.

04 NCAC 24B .0206 CANADIAN CLAIMS

The provisions of this Section apply to all Canadian claims.

*History Note: Authority G.S. 96-4;
Eff. July 1, 2015.*

04 NCAC 24B .0207 NOTIFICATION OF INTERSTATE CLAIM

- (a) The liable state shall notify the agent state of each initial claim, reopened claim file, claim transferred to interstate status, and each weekly claim filed from the agent state.
- (b) Notice shall be provided using the Interstate Benefit Payment Plan uniform procedures and record format promulgated as written guidance by the USDOL.
- (c) This Rule incorporates the United States Department of Labor's Interstate Benefit Payment Plan, Interstate Agreements, ET Handbook No. 392 app. B (2d ed. 1997) by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material found in the Interstate Benefit Payment Plan are located at 700 Wade Avenue, in Raleigh, North Carolina 27605, and may be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

*History Note: Authority G.S. 96-4; 20 CFR 616;
Eff. July 1, 2015.*

SECTION .0300 - WORK SEARCH REQUIREMENTS

04 NCAC 24B .0301 REQUIREMENTS FOR CLAIMANTS

- (a) Every claimant shall register for work at www.NCWorks.gov or a public employment office in the state in which you reside, actively seek work, are available for work, and will accept suitable work unless specifically exempted by G.S. 96-14.9 or federal law.
- (b) Each claimant shall make the minimum number of weekly work search contacts required by G.S. 96-14.9(e)(3).
 - (1) Each claimant shall maintain weekly work search contact records as required by G.S. 96-14.9(e)(4).
 - (2) Each claimant who receives his or her first unemployment benefit payment on or after March 1, 2014 shall have a mandatory in-person Employability Assessment Interview (EAI) with a workforce specialist at a local DWS office as a condition of continued eligibility for receipt of unemployment insurance benefits. Claimants excepted from this requirement are: Reemployment Eligibility Assessment (REA); those enrolled in and attending a Workforce Investment Act (WIA) program; attached claims; and longshoremens.
 - (A) The EAI shall be scheduled within four weeks of the first benefit payment to a claimant.
 - (B) Each claimant reporting for EAI shall be required to present a valid form of identification to DWS or their designee to establish their availability for work as required under G.S. 96-14.9. Valid identification shall be identification issued at the state or federal level and acceptable for Employment Verification (I-9) purposes, and includes the following:
 - (i) driver's license;
 - (ii) military identification;
 - (iii) United States Passport;
 - (iv) passport card;
 - (v) trusted traveler cards such as the NEXUS SENTRI and FAST CARDS issued by the U.S. Department of Homeland Security;
 - (vi) Permanent Resident Card (green card); and
 - (vii) Native American tribal identification card.
 - (C) DWS shall notify each claimant receiving an initial EAI of the date, time, and location by mail, at least 14 days in advance of the EAI.
- (c) Each claimant attending an EAI shall present his or her record of work in order to receive unemployment insurance services at a DWS office.
- (d) Each claimant shall actively seek suitable work as required under G.S. 96-14.9 and 20 C.F.R. 604.5 to receive unemployment benefits.
 - (1) Work registration at www.NCWORKS.gov alone shall be insufficient to establish that a claimant is actively seeking work.
 - (2) Each claimant shall seek work on their own behalf.

- (3) Restrictions as to salary, hours, or working conditions that are inconsistent with the labor market pursuant to the factors outlined in G.S. 96-14.9(f) shall indicate that a claimant is not making a reasonable search for suitable work.

History Note: Authority G.S. 96-4; 96-14.9; 96-14.14; 96-15; 20 CFR 604;
Eff. July 1, 2015.

04 NCAC 24B .0302 RECORD OF WORK AND WAGES OF CLAIMANTS

(a) Each claimant who has registered for work and filed a claim for unemployment insurance benefits shall keep a record of any work performed during any day within a benefit period. Each claimant shall record all work performed, regardless of whether the work constitutes employment as defined in G.S. 96-1(12).

(b) The record of work shall include the:

- (1) name and address of each individual or entity for whom the claimant worked;
- (2) total remuneration earned; and
- (3) the number of hours worked during the benefit period.

(c) Each claimant shall submit the record of work to DES when requested. DES shall request the record of work under the following conditions:

- (1) when a claimant's availability for work is questioned by failing to meet any of the requirements under G.S. 96-14.9(d);
- (2) whenever an inconsistency arises between what a claimant asserts in a work search report and what an employer reports to DES;
- (3) during a claimant's eligibility for benefits review;
- (4) during an audit; or
- (5) when a claimant reports to a DWS office for an Employability Assessment Interview.

(d) Each interstate claimant shall transmit a copy of their record of work, including photo identification to DES via facsimile or mail as provided in 04 NCAC 24A .0104(u).

History Note: Authority G.S. 96-4; 96-15; 20 CFR 604;
Eff. July 1, 2015.

SECTION .0400 - ADJUDICATION

04 NCAC 24B .0401 DETERMINATION BY ADJUDICATOR

Each adjudicator shall render a written determination resolving any issues related to the claim or protest under G.S. 96-15, which shall include:

- (1) each issue or question involved;
- (2) the docket or issue identification number of the case;
- (3) the resolution of each issue;
- (4) the citation of the provision of law applied to reach the resolution of each issue or question;
- (5) the parties' rights to file an appeal of the determination;
- (6) the statutory time period under G.S. 96-15(b)(2) within which an appeal may be filed;
- (7) instructions for requesting an in-person hearing;
- (8) information on filing an appeal of the determination as set forth in 04 NCAC 24A .0104(b); and
- (9) notice that claims filed on or after June 30, 2013 are subject to repayment of overpayments, including those resulting from any decision that is later reversed on appeal.

History Note: Authority G.S. 96-4; 96-15; 20 CFR 602;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24B .0402 REQUEST FOR SEPARATION INFORMATION FROM EMPLOYER

(a) DES shall provide requests for information regarding a claimant's separation or status to the employer's last known mailing address or email address as reflected in DES's official records. Requests shall be provided to the employer's mailing address when responding to the request by SCUBI, and to the email address when responding to the requests by SIDES.

(b) Employers shall electronically submit separation information and information regarding a claimant's employment status consistent with G.S. 96-15(b)(2) by SCUBI at www.des.nc.gov or by SIDES.

- (1) DES shall provide employers using SCUBI with written instructions for submitting responses by SCUBI with the request for information.
- (2) SIDES participants who elect to receive communications from SIDES shall receive written instructions for submitting responses to the request for information by email or proprietary SIDES interface software.

(c) Each employer's response in connection with a request from DES shall include the following information as applicable to a claimant's claim:

- (1) last and first dates of employment;
- (2) the claimant's pay rate;
- (3) the gross amount of any vacation, severance, and sick pay;
- (4) the beginning and ending dates covered by any separation payments;
- (5) if the claimant quit the job or left work:
 - (A) a copy of the employee's resignation letter, if one exists; and
 - (B) each reason provided by the claimant to the employer for leaving work; or
- (6) if the claimant was discharged:
 - (A) each reason for the discharge with supporting documentation and evidence; and
 - (B) a copy of each policy, warning, handbook, document, acknowledgment, or contract signed by the claimant that is relevant to the claimant's discharge; or
- (7) if the claimant was separated due to an inability to perform the job duties and was employed less than 100 days, an explanation describing the job requirements, the claimant's inability to perform the job duties, and steps taken by the employer to assist the claimant to perform the job duties prior to discharge; or
- (8) if the claimant is still employed with the employer:
 - (A) the terms of employment and conditions under which the claimant was hired;
 - (B) the number of hours per week that the claimant is currently working;
 - (C) the customary number of hours per week that the claimant has worked;
 - (D) with regard to any reduction of the claimant's work hours:
 - (i) the date the reduction took place;
 - (ii) reasons for the reduction; and
 - (iii) if the reduction is temporary, the expected date for the claimant's return to work; and
- (9) any separation or status information requested by DES, or that the employer expects is necessary for DES to make a correct initial determination of the claimant's eligibility for unemployment benefits.

History Note: Authority G.S. 96-1; 96-4; 96-11.3; 96-11.4; 96-15; 96-15.01; 20 U.S.C. 3303;
Eff. July 1, 2015;
Amended Eff. September 1, 2017.

SECTION .0500 – LABOR DISPUTES

04 NCAC 24B .0501 NOTICE TO EMPLOYER OF LABOR DISPUTE CLAIM

When a claimant files a claim for benefits that allegedly involves unemployment due to a labor dispute, DES shall notify the employer of the claim filed within 30 days of receipt.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015.

04 NCAC 24B .0502 EMPLOYER RESPONSE REQUIREMENT

(a) Within five days of receiving notice that a claim was filed involving unemployment due to a labor dispute, the employer shall provide the UI Director or designee, with a list containing:

- (1) the names of all affected employees;
- (2) the complete mailing addresses, including zip codes of all affected employees; and
- (3) the social security numbers of all affected employees.

- (b) The employer shall also provide the UI Director or designee, with:
- (1) notice of the first day of unemployment;
 - (2) the reason for the labor dispute; and
 - (3) the place where the labor dispute is or was in progress.

History Note: Authority G.S. 96-4; 96-14.7; 96-15;
Eff. July 1, 2015.

04 NCAC 24B .0503 DETERMINATION OF LABOR DISPUTE AND REFERRAL FOR HEARING

- (a) If an issue of unemployment due to a labor dispute exists, the Chief Counsel shall refer the matter in writing to DES's Board of Review or designee for hearing.
- (b) Hearings involving the issue of unemployment due to a labor dispute shall be heard upon order of the Board of Review or designee and conducted pursuant to 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 96-14.7; 96-15;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.

04 NCAC 24B .0504 ISSUES

The issues to be decided in labor dispute hearings may include the following:

- (1) whether a labor dispute existed, and if so, identification of the beginning and ending dates of the labor dispute, or whether the dispute is ongoing;
- (2) the reasons for the labor dispute;
- (3) whether any individual is disqualified to receive benefits as provided in G.S. 96-14.7(b); and
- (4) any other issue ordered by DES's Board of Review or designee, which shall be provided to each party in writing.

History Note: Authority G.S. 96-4; 96-14.7; 96-15;
Eff. July 1, 2015.

SECTION .0600 – UNEMPLOYMENT INSURANCE BENEFIT OVERPAYMENTS

04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT

- (a) A determination by DES finding an overpayment of benefits to a claimant shall contain:
- (1) the date the determination was mailed or sent to the claimant by electronic transmission;
 - (2) reasons for the overpayment;
 - (3) the statutory authority under G.S. 96-18(g)(3) for seeking repayment of the overpayment;
 - (4) notice that the claimant may protest the overpayment determination and instructions on how to protest the overpayment determination as provided in 04 NCAC 24A .0104(c) or (d); and
 - (5) notice that the claimant may file a request for waiver of the overpayment in the same manner as provided in 04 NCAC 24A .0104(g).
- (b) A determination notifying a claimant of an overpayment of benefits caused by the reversal of a previous decision that found the claimant eligible or not disqualified to receive benefits shall contain the same information contained in Subparagraphs (a)(1) through (3) of this Rule, and shall:
- (1) have no protest rights;
 - (2) notify the claimant that the overpayment may only be protested by appealing the underlying decision that ruled the claimant ineligible or disqualified for benefits; and
 - (3) notify the claimant that DES shall not consider a request to waive repayment of an overpayment while an appeal of the underlying decision that resulted in the overpayment is pending, or until the underlying decision that resulted in the overpayment is final.

History Note: Authority G.S. 96-4; 96-15; 96-18;
Eff. July 1, 2015;
Amended Eff. August 1, 2020; October 1, 2017.

04 NCAC 24B .0602 BILL FOR REPAYMENT OF OVERPAYMENT

(a) If a claimant does not protest an overpayment determination within 30 days, the determination of overpayment shall become final. DES shall mail a bill to the claimant for the amount of the overpayment owed after a final determination or decision.

(b) The first bill shall contain:

- (1) the total amount of the overpayment; and
- (2) notice that repayment of an overpayment determined to be fraudulent shall not be waived.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0603 WAGE AUDIT NOTICE FOR EMPLOYERS

(a) DES shall mail a Wage Audit Notice to an employer requesting information for investigating a potential claimant overpayment whenever a discrepancy or question to that claimant's eligibility for unemployment benefits exists. The Wage Audit Notice shall:

- (1) identify the claimant whose weekly earnings information is sought;
- (2) request the employer provide weekly earnings information during the specified time period; and
- (3) any other information necessary to investigate the claimant's overpayment status.

(b) The employer shall respond to the Wage Audit Notice request within 15 days by mail at NC Division of Employment Security, Benefits Integrity Unit, Post Office Box 25903 Raleigh, NC 27611 or internet at www.ncesc.com.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

SECTION .0700 – REQUEST FOR WAIVER OF OVERPAYMENT

04 NCAC 24B .0701 WAIVER OF REPAYMENT OF NONFRAUDULENT OVERPAYMENT

(a) Claimants may petition DES for a waiver of non-fraud unemployment insurance overpayments as provided in Rule .0601 of this Subchapter.

(b) A request for waiver of overpayment shall be accompanied by all evidence or documents that the claimant wishes DES to consider in deciding whether to grant the waiver and a written explanation of the basis of the waiver request.

(c) DES shall not consider any petition for waiver of overpayment while an appeal of the overpayment is pending.

History Note: Authority G.S. 96-4; 96-15; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0702 WAIVER OF REPAYMENT OF FRAUDULENT OVERPAYMENT

DES shall not waive repayment of overpayment of any State or federal unemployment insurance benefits caused by a claimant's fraud as defined under G.S. 96-18.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0703 DECISION AND CONSIDERATION OF WAIVER PETITIONS

(a) The Assistant Secretary or designee shall consider the degree of the claimant's fault in creating the overpayment and any other matters tending to show that collection of the overpayment would be against equity and good conscience. Except as provided in Rule .0704 of this Section, a claimant's present economic circumstances or present ability to repay is not relevant to whether a waiver request should be granted.

(b) The Assistant Secretary or designee shall render a written decision on the waiver request.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0704 FACTORS IN DETERMINING EQUITY AND GOOD CONSCIENCE

(a) DES shall consider the following factors:

- (1) whether the overpayment resulted from a decision on appeal and whether there was notice to the claimant that the case had been appealed;
- (2) whether there has been an affirmative finding under Subparagraph (a)(1) of this Rule regarding the claimant and the overpayment; and
- (3) whether recovery of the overpayment would cause extraordinary and lasting financial hardship to the claimant resulting in the claimant's loss of or inability to obtain minimal necessities of food, medicine, and shelter; and whether the financial hardship as described may be expected to last for the foreseeable future.

(b) In applying this hardship test in the case of attempted recovery by repayment, a substantial period of time shall be 180 days, and the foreseeable future shall be no less than 360 days.

(c) In applying this hardship test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future is the longest potential period of benefit entitlement at the time of the request for a waiver of repayment.

(d) In making financial hardship determinations, DES shall consider all potential income sources of the claimant, the claimant's family, and all cash resources available to the claimant and the claimant's family in the time period being considered.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0705 FACTORS IN DETERMINING FAULT

(a) In determining whether fault exists in any overpayment of state or federal compensation, the following factors shall be considered:

- (1) whether the claimant made or caused another to make a material statement or representation in connection with the application for federal compensation that resulted in the overpayment, and whether the claimant knew or should have known that the statement or representation was inaccurate;
- (2) whether the claimant failed or caused another to fail to disclose or omit a material fact in connection with an application for the compensation that resulted in the overpayment, and whether the claimant knew or should have known that the fact was material;
- (3) whether the claimant knew or could have been expected to know that he or she was not entitled to the compensation payment; and
- (4) whether there was a determination that the overpayment was the result of fraud as defined under G.S. 96-18.

(b) If any factor in Paragraph (a) of this Rule is confirmed, recovery of the overpayment shall not be waived.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

SECTION .0800 - INTERSTATE OVERPAYMENT RECOVERY

04 NCAC 24B .0801 DUTIES OF THE REQUESTING STATE

The requesting state shall:

- (1) send the recovering state a request for overpayment recovery assistance that shall include:
 - (a) certification that the overpayment is collectible under the requesting state's law;
 - (b) certification that the determination is final and that any rights to postpone recoupment of the benefits are exhausted or have expired;
 - (c) a statement of whether the state is participating in a cross-program offset by agreement with the U.S. Secretary of Labor; and
 - (d) a copy of the initial overpayment determination and a statement of the outstanding balance;
- (2) send notice of the request to the claimant pursuant to Rule .0802 of this Section;
- (3) send the recovering state a new outstanding overpayment balance whenever the requesting state receives any amount of repayment from a source other than the recovering state (e.g., interception of tax refund); and

- (4) send notice of the request by a method approved by the United States Department of Labor (USDOL).

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0802 DUTIES OF RECOVERING STATE

In recovering state or federal benefit overpayments, the recovering state shall:

- (1) issue an overpayment recovery determination to the claimant that shall include the following:
 - (a) statutory authority for the offset;
 - (b) identity of the state requesting recoupment;
 - (c) date of the original overpayment determination;
 - (d) type of overpayment, such as fraud or non-fraud;
 - (e) program type;
 - (f) total amount of offset; and
 - (g) amount to be offset weekly;
- (2) offset any benefits to be paid for each week claimed, in the amount permitted by that state's law;
- (3) prepare and forward a check payable to the requesting state, showing the amount recovered, except as provided in Rule .0803 of this Section;
- (4) retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefit period, or other extension of benefits, whichever is later; and
- (5) not redetermine the original overpayment determination.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0803 DUTIES OF PAYING STATE

(a) In recovering outstanding overpayments in the transferring state, the paying state shall:

- (1) offset any outstanding overpayment it receives from a transferring state prior to honoring any request from any other Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) participating state; and
- (2) credit deductions against the benefits paid statement, or forward a check to the transferring state as described Rule .0802 of this Section.

(b) This Rule incorporates the National Association of State Workforce Agencies' Interstate Reciprocal Overpayment Recovery Arrangement (2013) by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

04 NCAC 24B .0804 WITHDRAWALS OF COMBINED WAGE CLAIMS

(a) Withdrawal of a combined wage claim after benefits have been paid shall only be permitted where the combined wage claimant has repaid benefits overpaid, or authorizes the new liable state to offset the overpayment.

- (1) The paying state shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable state.
- (2) The recovering state, which is the new liable state, shall:
 - (A) offset the total amount of any overpayment resulting from withdrawal of a combined wage claim before releasing any payments to the claimant;
 - (B) offset the total amount of any overpayment resulting from withdrawal of a combined wage claim before honoring a request from any other participating state under IRORA;
 - (C) provide the claimant with written notice for the amount offset; and

(D) prepare and forward a check representing the amount recovered to the requesting state as described Rule .0802(a) of this Section.

(b) This Rule incorporates the National Association of State Workforce Agencies' Interstate Reciprocal Overpayment Recovery Arrangement (2013) by reference and includes subsequent amendments and editions of the referenced material in accordance with G.S. 150B-21.6. Copies of the incorporated material are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be obtained by request at no cost to the public by contacting DES as specified under 04 NCAC 24A .0201.

History Note: Authority G.S. 96-4; 96-18;
Eff. July 1, 2015.

SECTION .0900 - SETOFF DEBT COLLECTION ACT

04 NCAC 24B .0901 SETOFF DEBT COLLECTION ACT NOTICE TO CLAIMANT

(a) Consistent with G.S. 105A-8, DES shall provide written notice to the debtor within 10 days after receiving the debtor's refund.

(b) The notice shall include:

- (1) the claimant's name;
- (2) the type of debt;
- (3) the amount of the refund received by DES;
- (4) the total amount of the claimant's debt owed to DES;
- (5) the total amount of fees, as applicable;
- (6) the amount of assessed penalties, as applicable;
- (7) a citation to the legal authority that permits collection of the debt through setoff;
- (8) a statement of DES's intention to apply the refund against the debt;
- (9) an explanation that the debt is the basis for the agency's claim to the debtor's refund;
- (10) a statement of the claimant's right to contest the debt by filing a written request for a hearing;
- (11) the time period and procedure for requesting a hearing pursuant to 04 NCAC 24A .0104(h);
- (12) a statement that failure to request a hearing within the required time shall result in setoff of the debt;
- (13) a statement of the claimant's right to request to enter into a written repayment agreement with DES;
- (14) instructions for paying the debt;
- (15) a mailing address where payments shall be sent;
- (16) the date that the notice was mailed to the claimant; and
- (17) a telephone number for the claimant to seek information regarding the notice.

(c) Claimants choosing to repay the debt after receiving notice shall make payment to DES in accordance with 04 NCAC 24A .0104(z).

History Note: Authority G.S. 96-4; 105A-8;
Eff. July 1, 2018.

04 NCAC 24B .0902 CLAIMANT SETOFF DEBT COLLECTION ACT HEARINGS

(a) A claimant debtor may file an appeal from a notice to claim his or her State income tax refund pursuant to a North Carolina Department of Revenue Offset Letter in accordance with 04 NCAC 24A .0104(h).

(b) Rule 04 NCAC 24A .0106 shall apply in determining timeliness of an appeal.

(c) Hearings pursuant to G.S. 105A-8(b) shall be conducted consistent with the procedures prescribed in 04 NCAC 24C .0209.

History Note: Authority G.S. 96-4; 105A-8;
Eff. July 1, 2015;
Recodified from 04 NCAC 24B .0901 Eff February 1, 2018;
Amended Eff. July 1, 2018.

SECTION .1000 - TREASURY OFFSET PROGRAM

04 NCAC 24B .1001 NOTICE TO CLAIMANT OF REFERRAL TO TOP

(a) Consistent with 31 U.S.C. 3716, DES shall notify the claimant by mail of its intent to refer the debt to the Treasury Offset Program (TOP) at least 60 days before submitting the debt to TOP.

(b) The notice shall include:

- (1) the claimant's name;
- (2) the type of debt;
- (3) the total amount of the referred debt;
- (4) the total amount of the claimant's debt owed to DES;
- (5) the total amount of fees, as applicable;
- (6) the amount of assessed penalties, as applicable;
- (7) a citation to the legal authority that permits collection of the debt through TOP;
- (8) a statement of DES's intention to collect the debt through administrative offset;
- (9) a statement that the claimant may request a copy of DES's records that support the debt;
- (10) a statement of the claimant's right to request that DES reevaluate the debt;
- (11) the time period and procedure for requesting a reevaluation pursuant to 04 NCAC 24A .0104(j);
- (12) a statement that failure to request a reevaluation within the required time shall result in referral of the debt;
- (13) a statement of the claimant's right to request to enter into a written repayment agreement with DES;
- (14) instructions for paying the debt;
- (15) a mailing address where payments shall be sent;
- (16) a mailing address and facsimile number to request a reevaluation of the debt;
- (17) a telephone number for the claimant to seek information regarding the notice; and
- (18) the date that the notice was mailed to the claimant.

(c) Claimants choosing to repay the debt after receiving notice shall make payment to DES in accordance with 04 NCAC 24A .0104(z).

*History Note: Authority G.S. 96-4; 96-18; 31 CFR 285; 31 U.S.C. 3716;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

04 NCAC 24B .1002 CLAIMANT REEVALUATION OF DEBT

(a) A claimant requesting a reevaluation of his or her debt shall submit a written request to DES's Benefits Integrity Unit pursuant to 04 NCAC 24A .0104(j).

- (1) The written request shall explain why the debt should not be referred to the Treasury Offset Program (TOP) for collection.
- (2) The written request shall be accompanied by documents or other clear and convincing evidence that shows:
 - (A) the identity of the individual to whom the debt is assigned is incorrect; or
 - (B) the amount of the debt is inaccurate.

(b) The Assistant Secretary or designee shall consider the evidence submitted by the claimant.

(c) The Assistant Secretary or designee shall issue a written decision on the request for reevaluation. The written decision shall be mailed or sent by electronic transmission to the claimant and include the following:

- (1) whether the debt shall be referred to TOP; and
- (2) reasons for the decision.

*History Note: Authority G.S. 96-4; 96-18; 31 CFR 285; 31 U.S.C. 3716;
Eff. July 1, 2015;
Amended Eff. July 1, 2018.*

SECTION .1100 - NATIONAL DIRECTORY OF NEW HIRES

04 NCAC 24B .1101 NDNH CLAIMANT NOTICE

(a) When DES receives NDNH information that a claimant has returned to work, DES shall send written notice to the claimant requesting employment and wage information. The notice shall inform the claimant that:

- (1) DES is conducting an audit of the claimant's claim for unemployment benefits;

- (2) DES received information that the claimant may have filed, continued to file, or received unemployment benefits during weeks when the claimant may have been employed;
 - (3) DES shall request from the employer the actual wages earned for the weeks where the claimant may have been employed while claiming or receiving unemployment insurance benefits;
 - (4) he or she shall respond to DES with the employment and wage information requested in the notice within 14 days of the date that the notice was mailed or sent by electronic transmission to the claimant;
 - (5) he or she is required to report all wages earned when filing weekly certifications;
 - (6) an overpayment of unemployment insurance benefits may exist;
 - (7) the claimant may be required to repay any benefits determined to be overpaid;
 - (8) working, earning wages, and failing to report employment or wages may constitute fraud under G.S. 96-18;
 - (9) individuals may be criminally prosecuted for committing fraud; and
 - (10) the consequences for failing to respond to DES's request for employment information include suspension of benefit payments to determine eligibility.
- (b) Each notice shall request that the claimant certify that he or she did not work for the listed employer during the specified time period, or provide and certify that the following information is true and correct:
- (1) the employer's phone number;
 - (2) the claimant's job title;
 - (3) the month during which the claimant may have been hired;
 - (4) the first date of the claimant's employment;
 - (5) the last date that the claimant performed work for the employer;
 - (6) the claimant's starting and current rate of pay;
 - (7) the claimant's employment status with the employer;
 - (8) the claimant's pay records for the specified time period;
 - (9) the claimant's standard or customary work week;
 - (10) the total number of hours worked by the claimant for the specified weeks; and
 - (11) the amount and type of any other pay earned by the claimant for the specified weeks.
- (c) Each notice shall provide information on how the claimant may contact DES's Benefits Integrity Unit by mail or facsimile to provide the requested employment and wage information.

History Note: Authority G.S. 96-14.1; 94-14.9; 96-17; 96-18;
Eff. October 1, 2017.

04 NCAC 24B .1102 NDNH EMPLOYER NOTICE

- (a) When DES receives NDNH information that a claimant has returned to work, DES shall send written notice to the potential employer requesting employment and wage information. The notice shall:
- (1) inform the employer that DES is conducting an audit of the claimant's claim for unemployment benefits;
 - (2) specify the weeks for which the claimant may have been employed while claiming or receiving unemployment benefits;
 - (3) request that the employer respond to DES with the requested employment and wage information within 14 days;
 - (4) request that the employer certify that the claimant did not work for the employer during the specified time period, or provide and certify that the following information is true and correct:
 - (A) the month during which the claimant may have been hired;
 - (B) the first date of the claimant's employment;
 - (C) the last date that the claimant performed work for the employer;
 - (D) the claimant's starting and current rate of pay;
 - (E) the claimant's employment status with the employer;
 - (F) the claimant's original time and pay records;
 - (G) the manner in which the employer's pay periods are structured, including the pay period ending dates;
 - (H) the claimant's standard or customary work week;
 - (I) the total number of hours worked by the claimant for the specified weeks;
 - (J) the date that the claimant was paid for the specified weeks;

- (K) the gross wages earned by the claimant for work performed in each specified week; and
 - (L) the amount and type of any other pay earned by the claimant for the specified weeks.
- (b) Each notice shall provide information on how the employer may contact DES's Benefits Integrity Unit by mail or facsimile to provide the requested employment and wage information.

History Note: Authority G.S. 96-14.1; 94-14.9; 96-17; 96-18;
Eff. October 1, 2017.

04 NCAC 24B .1103 CLAIMANT RESPONSE TO REQUEST FOR EMPLOYMENT AND WAGE INFORMATION

- (a) If a claimant fails to respond to DES's request for employment and wage information within 14 days of the date that the notice was mailed or sent by electronic transmission to the claimant, DES shall adjudicate an issue of eligibility for failure to report in accordance with 04 NCAC 24B .0401;
- (b) If a claimant responds to DES's request for employment and wage information within 14 days, DES shall review information received from the claimant or employer to determine if an overpayment of unemployment insurance benefits exist.
- (c) DES shall issue a determination consistent with 04 NCAC 24B .0601 if an overpayment exists.

History Note: Authority G.S. 96-14.9; 96-15; 96-17; 96-18;
Eff. October 1, 2017.

04 NCAC 24B .1104 EMPLOYER RESPONSE TO REQUEST FOR EMPLOYMENT AND WAGE INFORMATION

- (a) If an employer fails to respond to DES's request for employment and wage information within 14 days of the date that the request was mailed or sent by electronic transmission to the employer, such failure may result in DES's finding that the employer's response was untimely or inadequate in accordance with 04 NCAC 24D .0300.
- (b) An employer's response to DES's request for employment and wage information may result in credits to, or elimination of charges to the employer's account.

History Note: Authority G.S. 96-11.3, 96-11.4; 96-17;
Eff. October 1, 2017.