

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



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Pandemic Unemployment Assistance Continues to Expand

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As part of the federal government's response to the COVID-19 pandemic, the Families First Coronavirus Response Act (FFCRA) was enacted on March 18, 2020. Division D of the FFCRA is the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA). EUISAA sets forth the requirements for emergency administrative grants to states and authorizes emergency flexibility allowing states to temporarily modify certain aspects of their unemployment compensation laws, a short-term waiver of interest on state trust fund advances, and full federal funding during extended benefit periods through December 31, 2020.

EUISAA dovetails with Executive Orders issued by North Carolina Governor Roy Cooper on March 17, 2020, and April 20, 2020, and with guidance received from the North Carolina Department of Labor, all of which serve to expand the pool of applicants eligible to receive unemployment compensation during the pandemic. As a result, thousands of North Carolinians who otherwise would not have been deemed eligible to receive unemployment compensation now have the opportunity to apply for Pandemic Unemployment Assistance (PUA) through North Carolina's Division of Employment Security (DES).

DES Emergency Rule Relaxes Standards for Unemployment Eligibility

On April 3, 2020, the DES issued an emergency rule effective April 14, 2020, in response to Governor Cooper's Executive Order No. 118 issued on March 17, 2020, which directed the DES to ensure that individuals who are separated from employment, have had hours reduced, or are prevented from working due to a medical condition caused by COVID-19 or due to communicable disease control measures, are eligible for unemployment benefits to the maximum extent permitted under federal law.

The DES's emergency rule provides a temporary waiver of the following statutory eligibility requirements for unemployment insurance benefits during the period of the COVID-19 public health emergency:

- The requirement of a one week waiting period;

- The work search requirements;
- The requirement for an individual to actively seek work; and
- The lack of work requirements.

The emergency rule further temporarily waives the charging of benefit payments to employer accounts. Still, it requires employers to provide separated employees with notice of the availability of unemployment compensation at the time of separation from employment which shall contain the following representations:

- Unemployment insurance benefits are available to workers who are unemployed and who meet the State's eligibility requirements;
- Employees may file a claim in the first week that employment stops, or work hours are reduced;
- Employees may file claims online at des.nc.gov or by telephone to (888) 737-0259;
- Employees must provide the DES with the following information for DES to process the claim:
 - Full legal name;
 - Social security number; and
 - Authorization to work (if the employee is not a U.S. citizen or resident); and
- Employees may contact the DES at (888) 737-0259 and select the appropriate menu option for assistance.

Executive Order Clarifies Unemployment Eligibility for Furloughed Employees

On April 20, 2020, in response to guidance provided by the United States Department of Labor, North Carolina Governor Roy Cooper issued Executive Order No. 134, which authorized employers to make COVID-19 support payments to their temporarily furloughed employees as part of a COVID-19 Support Payment Plan without jeopardizing or delaying their employees' right to obtain unemployment compensation under the DES emergency rule. In order to implement this process, the employer must submit employer-filed unemployment insurance claims for employees receiving COVID-19 Support Payments to the DES with a COVID-19 Support Payment Plan which must:

- Detail the anticipated length of the furlough;
- State the amount of the COVID-19 Support Payments;
- Identify the names of the employees receiving COVID-19 Support Payments;
- Include a promise that the employer is not making the COVID-19 Support Payments as a form of compensation for the employees' performance of services during the furlough; and
- Include a promise that the employees are not required to return or repay the COVID-19 Support Payments.

The purpose of offering Support Payment Plans to furloughed employees is to retain their loyalty once an employer is in a position to re-engage its employees for the provision of services to the public. However, Executive Order No. 134 provides that COVID-19 Support Payment Plans do not constitute a promise by the employer that it

will make all payments listed in the Plans, nor do they constitute a promise by the employee to return to work for the employer.

Expansion of Unemployment Benefits to Self-Employed Workers

As a general rule, independent contractors, gig workers, and self-employed workers are not eligible to receive state unemployment benefits. However, effective April 24, 2020, the United States Department of Labor has expanded unemployment benefits under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to include self-employed workers as persons potentially eligible for such relief if they are unable to work as a direct result of COVID-19. They may also qualify under the new law for an additional \$600 per week in unemployment compensation and an extended period of benefits from 26 weeks to 39 weeks. Necessary documentation which the DES will expect to review in order to make a determination that a worker qualifies as an independent contractor, a gig worker, or a self-employed worker eligible to receive Pandemic Unemployment Assistance includes:

- 2019 tax returns
- Recent paycheck stubs
- Bank receipts
- 1099s
- Billing statements and notices
- Business licenses
- Contracts, invoices, and ledgers

Examples of documentation that the DES will wish to review in order to determine that COVID-19 is the reason for such workers' loss of work include:

- Documentation from medical professionals related to diagnosis or isolation instructions
- Notices from school or childcare providers
- Notices from county or state government regarding business closures or stay at home orders
- Documentation that a job offer or need for the worker's services was canceled or delayed because of COVID-19

We at Smith Debnam continue to monitor these guidelines closely as part of our comprehensive response to the COVID-19 pandemic. If you have any questions, please call employment and human resources law partner [Connie Carrigan](#) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

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