

## CHAPTER 24 - EMPLOYMENT SECURITY

### SUBCHAPTER 24A – GENERAL

#### SECTION .0100 – GENERAL

##### **04 NCAC 24A .0101 OFFICE LOCATION**

The administrative office of the North Carolina Department of Commerce, Division of Employment Security (hereinafter "DES" or "The Division") is located at 700 Wade Avenue, in Raleigh, North Carolina. The general mailing address is Post Office Box 25903, Raleigh, NC 27611-5903. The office is open to the public during business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for State holidays as set forth in 25 NCAC 01E .0901, including subsequent amendments and editions.

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

##### **04 NCAC 24A .0102 ADDRESS CHANGES AND ELECTRONIC ADDRESS CHANGES**

(a) Each employing unit that has or had individuals in employment as defined in G.S. 96-1 shall notify DES in writing of any change to its mailing address. This notice shall be transmitted by facsimile, via the internet on the DES website, or by postal mail within seven days after the effective date of the change. All notices shall be submitted to the Tax Administration Section, Attn: Address Change by mail to Post Office Box 26504, Raleigh, North Carolina, 27611-6504, facsimile to (919) 733-1255, or email to des.tax.customerservice@nccommerce.com.

(b) Each claimant with an active claim or who is registered for work at a public employment office, shall notify DES in writing of any change in address or electronic mail address within seven days after the effective date of the change. All notices shall be submitted to the DES Customer Call Center, Attn: Address Change, by mail to Post Office Box 25903, Raleigh, NC 27611-5903, facsimile to (919) 857-1296, or email to des.ui.customerservice@nccommerce.com. Claimants may also make and submit address and electronic mail address changes from their home page in the Southeast Consortium Unemployment Benefits Integration (SCUBI) system.

(c) Each claimant who is liable to DES for an overpayment of benefits, shall notify DES by facsimile, via the DES website, or by postal mail of any change of address within seven days after the effective date of the change. All notices of overpayment address changes shall be submitted to the Benefits Integrity Unit, Attn: Overpayment Address Change by mail to Post Office Box 25903, Raleigh, NC 27611-5903, facsimile to (919) 733-1369, or email to des.ui.bpc@nccommerce.com.

*History Note:* Authority G.S. 96-4; 96-40; 20 C.F.R. 640.1;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018; September 1, 2017.

##### **04 NCAC 24A .0103 ADDRESSES FOR NOTICE AND ELECTRONIC NOTICE**

(a) In all transactions requiring notice by G.S. 96 or these Rules, DES shall provide notice to a claimant's or employer's last known address as reflected in its official records.

(b) Except as provided in this Chapter, DES shall mail notice of an initial claim to the employer at one of the following addresses:

- (1) the address of the employer for which the claimant last worked;
- (2) if the employer has more than one branch or division at different locations, the address of the branch or division for which the claimant last worked; or
- (3) an address designated by the employer as reflected in DES's official records.

(c) Claimants may elect to receive communications from DES by electronic transmission as defined in 04 NCAC 24A .0105.

- (1) A claimant who consents to receive communication by electronic transmission may withdraw consent at any time by providing DES with a written withdrawal of consent.
- (2) Any communication that was sent to a claimant by electronic transmission before the withdrawal of consent shall be effective as an electronic transmission.

- (3) Except as provided in Paragraph (f) of this Rule, withdrawal of consent to receive communication by electronic transmission shall become effective on the date that DES receives the written withdrawal of consent.
- (d) A claimant who elects to receive communications by electronic transmission shall provide DES with a valid email address.
  - (1) DES shall validate each email address by sending a notification containing a hyperlink to the email address provided by the claimant. The email sent by DES shall require the claimant to click on the hyperlink in the email in order to navigate to SCUBI to complete validation.
  - (2) After a claimant validates the email address, DES shall provide all communication by electronic transmission, including determinations, requests for information, notices, and decisions. For each action taken on an account, DES shall notify each claimant by email that an action was taken, and shall direct the claimant to log into his or her SCUBI account.
- (e) A claimant who elects to receive communication from DES by electronic transmission shall not receive communication from DES by mail, unless the communication transmitted to the claimant's email address is returned to DES as undeliverable.
  - (1) When an electronic communication is returned to DES as undeliverable, DES shall suspend communications by electronic transmission to the claimant's email address, and shall place an alert on the claimant's SCUBI home page. The alert shall notify the claimant:
    - (A) that electronic transmissions to his or her email address have been suspended;
    - (B) to contact the Customer Call Center to update his or her mailing and email addresses as provided in 04 NCAC 24A .0102; and
    - (C) that the claimant may elect to resume receiving communications by electronic transmissions.
  - (2) Upon suspension of electronic transmissions to the claimant, DES shall send all communications to the claimant by first class mail.
  - (3) A claimant who elected to receive communications by electronic transmissions from DES, and who desires to continue receiving electronic communications, but instead receives postal mail, shall contact the Customer Call Center by phone at (888) 737-0259 or facsimile at (919) 250-4315 to provide a valid email address, and request DES to send communications by electronic transmission.
- (f) Except as otherwise provided in this Chapter, DES shall use the date and time of the electronic transmission to the email address provided by the claimant, or authorized agent, as the service date for purposes of calculating the time periods for correspondence, notices, deadlines, and filings. Time periods shall be determined by the date of electronic transmission when a communication is not received by the claimant as a result of an error or omission on the part of the claimant, or agent of the claimant.

*History Note: Authority G.S. 96-4; 96-9.2; 96-14.1; 96-15; 96-40;  
Eff. July 1, 2015;  
Amended Eff. September 1, 2017.*

#### **04 NCAC 24A .0104 ADDRESSES FOR FILING CLAIMS, APPEALS, EXCEPTIONS, REQUESTS OR PROTESTS**

- (a) Claimants shall file a claim for unemployment insurance benefits on DES's website or by telephone.
  - (1) The telephone number for DES's Customer Call Center for filing a new initial claim or inquiring about an existing claim is (888) 737-0259.
  - (2) The telephone number for filing weekly certifications is (888) 372-3453.
- (b) Appeals from a Determination by Adjudicator shall be filed with the Appeals Section in SCUBI, by mail, facsimile or email.
  - (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
  - (2) The facsimile number is (919) 857-1296.
  - (3) The email address is des.public.appeals@nccommerce.com.
  - (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and

employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.

(c) Appeals of a Non-Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
- (2) The facsimile number is (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (5) Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 857-1296, or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(d) Appeals of a Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
- (2) The facsimile number is (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (5) Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 857-1296, or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).

(e) Appeals of a Monetary Determination denying a protest to a Wage Transcript and Monetary Determination shall be filed with the Tax Administration Section in SCUBI, by mail, facsimile or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).
- (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (6) Any questions regarding the contents of a determination denying a protest to a Wage Transcript and Monetary Determination shall be directed to the Wage Records Unit of the Tax Administration Section by telephone to (919) 707-1191, facsimile at (919) 733-1255, or email at [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(f) Protests of a Wage Transcript and Monetary Determination shall be filed with the Tax Administration Section in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.

- (4) Protests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest, the docket or identification number of the determination being protested, the claimant's identification number, the names of the claimant and employer, each reason for the protest, the name of the individual filing the protest, the official position of an individual filing the protest on behalf of the party, and a telephone number for the party or party's legal representative.
  - (5) Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be directed to the Wage Records Unit by telephone to (919) 707-1191, facsimile at (919) 733-1255, or email at [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).
- (g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.
- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
  - (2) The facsimile number is (919) 857-1296.
  - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Petitions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the petition, docket or identification number of the overpayment determination, the claimant's identification number, the name of the claimant, each reason for the request to waive repayment of the overpayment, the name of the individual filing the petition, the official position of an individual filing the petition on behalf of the party, and a telephone number for the party or party's legal representative.
- (h) Claimant Appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.
- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
  - (2) The facsimile number is (919) 857-1296.
  - (3) Correspondence regarding a claimant's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the offset letter being appealed, the claimant's identification number, the name of the claimant, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
  - (5) Any questions regarding the contents of a claimant's NCDOR Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 857-1296, or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).
- (i) Employer Appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter for outstanding tax debts shall be filed with the Tax Administration Section by mail or facsimile.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
  - (2) The facsimile number is (919) 733-1255.
  - (3) Correspondence regarding an employer's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the offset letter, the name of the employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
  - (5) Any questions regarding the contents of an employer's NCDOR Offset letter for outstanding tax debts shall be directed to the Tax Administration Section by facsimile at (919) 733-1255, or email at [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).
- (j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.
- (1) The mailing address is Post Office Box, 27967, Raleigh, North Carolina 27611-7697.
  - (2) The facsimile number is (919) 857-1296.
  - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.

- (4) Requests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or identification number of the TOP notice, the claimant's identification number, the name of the claimant, each reason for the request, the name of the individual filing the request, the official position of an individual filing the request on behalf of the party, and a telephone number or the party or party's legal representative.
  - (5) Claimant questions regarding TOP shall be directed to a Recovery Specialist by telephone to (919) 707-1338, or email at [des.ui.bpc@nccommerce.com](mailto:des.ui.bpc@nccommerce.com).
- (k) Employer Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Tax Administration Section by mail or facsimile.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
  - (2) The facsimile number is (919) 733-1255.
  - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Requests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or identification number of the TOP notice, the name of the employer, each reason for the request, the name of the individual filing the request, the official position of an individual filing the request on behalf of the party, and a telephone number for the party or party's legal representative.
  - (5) Employer questions regarding TOP shall be directed to the Tax Administration Section by telephone to (919) 707-1150, facsimile at (919) 733-1255, or email at [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).
- (l) Appeals from an Appeals Decision shall be filed with the Board of Review in SCUBI, by mail, facsimile or email.
- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.
  - (2) The facsimile number is (919) 733-0690.
  - (3) The email address is [des.ha.appeals@nccommerce.com](mailto:des.ha.appeals@nccommerce.com).
  - (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (m) Protests or Appeals of Adequacy Determinations shall be filed with the Claims Unit in SCUBI, by mail or facsimile.
- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
  - (2) The facsimile number is (919) 857-1296.
  - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the party filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (n) Protests or Appeals of a Tax Liability Determination shall be filed with the Tax Administration Section by mail, facsimile or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
  - (2) The facsimile number is (919) 715-7197.
  - (3) The email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).
  - (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the

claimant and employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.

(o) Protests or Appeals of a Tax Rate Assignment shall be filed with the Tax Administration Section by mail, facsimile or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the rate assignment, the name and address of the employer, the employer's account number, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.

(p) Protests or Appeals of Audit Results shall be filed with the Tax Administration Section by mail, facsimile or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the result being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.

(q) Protests or Appeals of Tax Assessments shall be filed with the Tax Administration Section by mail, facsimile or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the assessment being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of the individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.

(r) Exceptions to a Tax Opinion shall be filed with the Board of Review by mail, facsimile or email.

- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.
- (2) The facsimile number is (919) 715-7193.
- (3) The email address is BOR@nccommerce.com.
- (4) Correspondence and exceptions submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Exceptions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the exceptions, the docket or identification number of the tax opinion, the claimant's identification number, the names of the claimant and employer, the name of the individual filing the exceptions, each reason for the exceptions, the official position of an individual filing the exceptions on behalf of the party, and a telephone number for the party or party's legal representative.

(s) Requests for Non-Charging of Benefits to an employer's account, and protests or appeals of benefit charges to an employer's account shall be filed with the Claims Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
  - (2) The facsimile number is (919) 857-1296.
  - (3) Correspondence, requests, protests, or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Requests for non-charging and protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or employer's identification number, the name of the employer, each reason for the request, the name and official position of the individual filing the request, protest, or appeal, on behalf of the party, and a telephone number for the party or party's legal representative.
- (t) Requests for Seasonal Determinations and Protests or Appeals of a Denial of Seasonal Assignment shall be filed with the Tax Administration Section by mail, facsimile or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
  - (2) The facsimile number is (919) 715-7197.
  - (3) The email address is des.tax.customerservice@nccommerce.com.
  - (4) Correspondence and protests or appeal submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the denial being appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (u) Transmittal of interstate work search records and photo identification shall be filed with the Claims Unit by mail or facsimile.
- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
  - (2) The facsimile number is (919) 857-1296.
- (v) Requests for oral arguments or to reschedule oral arguments shall be filed with the Board of Review in SCUBI, by mail, facsimile or email.
- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.
  - (2) The facsimile number is (919) 733-0690.
  - (3) The email address is des.ha.appeals@nccommerce.com.
  - (4) Correspondence and requests for oral arguments submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Requests for oral arguments shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or issue identification number of the decision being appealed, the claimant's identification number, the names of the claimant and employer, the name and official position of the individual filing the request on behalf of the party, a telephone number for the party or party's legal representative and a statement that a copy of the request was served on the opposing party, if one exists.
- (w) Employers may file Requests for Compromise of Tax Debts with DES's Tax Administration Section by mail, facsimile or email.
- (1) The address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
  - (2) The facsimile number is (919) 733-1255.
  - (3) The email address is des.tax.customerservice@nccommerce.com.
  - (4) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (5) The letter shall contain the date of the request, the name of the employer, the name and official position of the individual filing the election on behalf of the employer, and a telephone number for the party or party's legal representative.
- (x) Employers electing to pay reimbursements for benefits, rather than contributions, shall submit written notice of their election to DES's Tax Administration Section by mail, facsimile or email.
- (1) The address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
  - (2) The facsimile number is (919) 733-1255.
  - (3) The email address is des.tax.customerservice@nccommerce.com.
  - (4) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.

- (5) The letter shall contain the date of the notice of election, the name and address of the employer, the name and official position of the individual filing the election on behalf of the employer, and a telephone number for the party or party's legal representative.
- (y) Employers shall make payments to DES by credit card, money order, electronic check, business check with funds drawn from a U.S. financial institution, cashier's check from a U.S. financial institution, automated clearing house (ACH) credit, or cash submitted in-person to DES's Tax Auditor.
  - (1) Payments made by money order, business check or cashier's check shall be sent by mail or delivery service to DES's Tax Administration Section, Post Office Box 26504, Raleigh, North Carolina 27611-6504, or by delivery to an agent of DES designated to accept payments in accordance with G.S. 96-10.
  - (2) Payments by electronic transmission, as defined in 04 NCAC 24A .0105(25), shall be made on DES's website.
  - (3) Payments by ACH credit shall be initiated by employers through their U.S. financial institution.
- (z) Claimants shall make payments to DES by cashier's check from a U.S. financial institution, by personal check with funds drawn from a U.S. financial institution, by money order, or by credit card.
  - (1) Payments by mail or delivery service shall be sent to the Benefit Payment Control (BPC) Unit, Post Office Box 25903, Raleigh, North Carolina 27611-5903.
  - (2) Payments by credit card shall be made on DES's website, or by calling BPC at (919) 707-1338.
- (aa) Payment of fees for documents, digital recordings, and transcripts shall be made by money order, cashier's check from a U.S. financial institution, or by personal or business check with funds drawn from a U.S. financial institution.
  - (1) An agency of state or federal government, a county, or a municipality may pay fees by bank draft.
  - (2) Payment shall be sent by mail to DES's Office of Finance & Budget, Post Office Box 25903, Raleigh, North Carolina 27611-5903.
- (bb) Protests or Appeals from a Result of Investigation shall be filed with the Legal Services Section, ATTN: Chief Counsel, by mail or facsimile.
  - (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611-5903.
  - (2) The facsimile number is (919) 733-8745.
  - (3) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
  - (4) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination or result being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's representative.
  - (5) Questions regarding Results of Investigation shall be directed to the Legal Services Section by telephone to (919) 707-1025, or facsimile to (919) 733-8745.

*History Note:* Authority G.S. 75-62; 96-4; 96-9.6; 96-9.8; 96-10; 96-10.1; 96-14.1; 96-15; 96-17; 96-18; 96-40; 20 C.F.R. 603.4; 20 CFR 603.8;  
 Eff. July 1, 2015;  
 Amended Eff. September 1, 2017;  
 Amended Eff. August 1, 2020; July 1, 2018.

#### **04 NCAC 24A .0105 DEFINITIONS**

- (a) In addition to the terms defined in G.S. 96, the following definitions apply whenever these terms are used in this Chapter:
  - (1) "Additional claim" means the reopening of a valid initial claim for unemployment insurance benefits after a claimant, as defined in Item (16) of this Rule, ceased filing a weekly certification as defined in G.S. 96-14.9, for one or more weeks due to intervening employment. The first week of eligibility filed after a claim has been reopened shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
  - (2) "Agent state" means any state from which, or through which a claimant files a claim for benefits from another state.



- (3) "Adjudicator" means an employee of DES appointed to conduct an informal investigation and render a determination as required by G.S. 96-15(b).
- (4) "Appeal" means a submission by a party with statutory appeal rights requesting the Appeals Section of DES or the Board of Review to review a determination or decision that is adverse to that party.
- (5) "Appeals Referee" or "Hearing Officer" means an attorney appointed to hear or decide an appeal from a determination by an adjudicator and issues involving the rights, status, and liabilities of an employer pursuant to the provisions of G.S. 96-4(q) or 96-15(c).
- (6) "Appeals Section" means the section within DES where Appeals Referees conduct quasi-judicial administrative evidentiary hearings and make decisions in contested cases for unemployment insurance benefits. The Appeals Section also consists of support staff that assists Appeals Referees.
- (7) "Application for a position" means supplying the information required by an employer to place an individual in a particular position or opening. Such information may include proof of the qualifications or license required by the position or opening, employment history, and personal information, such as full name, Social Security Number or other identification number, telephone number, and current address. An application for a position may be accomplished in whatever manner acceptable to an employer, including the completion of a designated form, the provision of a written resume, or verbally.
- (8) "Authorized Representative" means an individual authorized by an employer or employing unit to act on the employer or employing unit's behalf before DES.
- (9) "Base period" means as defined in G.S. 96-1(b)(3). Calendar quarters are January through March, April through June, July through September, and October through December.
- (10) "Benefit week" means a period of seven consecutive calendar days, ending at 11:59 pm on Saturday.
- (11) "Benefit wage credits" means wages used to determine a claimant's monetary eligibility for benefits. Benefit wage credits consist of the wages a claimant received or should have received during the claimant's base period of employment and to include those wages that were awarded and paid to the claimant after the base period pursuant to a court order; a National Labor Relations Board determination; another adjudicative agency; or by private agreement, consent, or arbitration for loss of pay because of discharge. DES shall credit the awarded wages to the quarter in which the wages should have been paid.
- (12) "Board of Review" means as defined in G.S. 96-15.3 and is the body that conducts "higher authority review" of appeals arising from the decisions of the Division, tax liability hearings, and labor disputes. The Board of Review is also referred to as the "Board" or "BOR."
- (13) "Calendar Period" means the 52 week period beginning with the first day of a week in which an individual first files a valid claim for benefits and registers for work. The week begins on the first Sunday preceding the initial claim filed and ends the following year at 11:59 p.m. on Saturday.
- (14) "Charging cycle" means each calendar quarter following the prior reporting cycle, during which the employer's account is assessed and charged for erroneous unemployment insurance benefit payments resulting from untimely or inadequate responses, as defined in 04 NCAC 24D .0301, from the employer to particular Requests for Separation Information during that charging cycle if the employer met or exceeded the adequacy threshold in the prior reporting cycle.
- (15) "Chief Appeals Referee" includes the Chief Appeals Referee's designee, unless otherwise stated.
- (16) "Claimant" means an individual who files an unemployment insurance benefits claim for payments as provided in G.S. 96-14.1.
- (17) "Clear and convincing evidence" means evidence indicating that the thing to be proved is highly probable or reasonably certain.
- (18) "Customarily," as the term is used in G.S. 96-16, means during at least seventy-five percent of the calendar years of an observation interval.
- (19) "Customary" as used in G.S. 96-15.01 means the usual and habitual number of hours worked.
- (20) "Day" means a calendar day.
- (21) "Delivery service" means an authorized designated carrier pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure and 26 U.S.C. 7502(f)(2).
- (22) "DES website" means the internet address found at [www.des.nc.gov](http://www.des.nc.gov).

- (23) "Due diligence" means the measure of carefulness, precaution, attentiveness, and good judgment as to be expected from, and exercised by a reasonable and prudent person under the particular circumstances.
- (24) "Effective date of a claim" means either the benefit year beginning on the Sunday preceding the payroll week ending date if the claimant is payroll attached, or the benefit year beginning on the Sunday of the calendar week within which a claimant filed a valid claim for benefits and registered for work if the claimant is not payroll attached.
- (25) "Electronic transmission" means. delivery to an electronic mail address at which an individual or employer has consented to receive notices, documents, or other communications; or posting on an electronic network or site accessible by internet through use of a mobile application, computer, mobile device, tablet, or any other electronic device, and sending separate notice of the posting, or using any other delivery method to which the individual or employer has consented. Communication sent by DES electronic transmission shall be complete on transmission.
- (26) "Equity and good conscience" means fairness as applied to a given set of circumstances.
- (27) "Fault" means an error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement.
- (28) "Good cause" means a legally sufficient reason.
- (29) "In-person/telephone hearing" means an administrative hearing before the Appeals Section, Board of Review, or other designated Hearing Officer where at least one party or witness appears in-person, and another party or witness appears by telephone.
- (30) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits may be paid to unemployed claimants absent from the state (or states) where benefit wage credits accumulated. 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 are located at 700 Wade Avenue, in Raleigh, North Carolina, and may be obtained by request at no cost to the public as allowed under 04 NCAC 24A .0201.
- (31) "Interstate claimant" means a claimant who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any claimant who customarily commutes from a residence in an agent state to work in a liable state unless the Division finds that this exclusion would create an undue hardship.
- (32) "Labor dispute" means a dispute between an employer and its employees about wages, hours, working conditions, or issues concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment, between those who could be concerned in the controversy.
- (33) "Last known address" means the most recent address provided to DES by the claimant or taxpayer located in its official record, except that DES shall update addresses maintained in its official records by referring to data accumulated and maintained in the United States Postal Service (USPS) National Change of Address database that retains change of address information (NCOA Database). If the claimant or taxpayer's name and last known address in DES's official records match the claimant or taxpayer's name and previous mailing address contained in the NCOA database, the new address in the NCOA database is the taxpayer's last known address. This Rule incorporates the United States Postal Service's National Change of Address Database 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.
- (34) "Legal representative" means a licensed attorney or a person supervised by a licensed attorney.
- (35) "Liable state" means any state against which a claimant files a claim for benefits through another state.
- (36) "NDNH" is an acronym, and means the National Directory of New Hires. NDNH is a national database of wage and employment information established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and operated by the federal Office of Child Support Enforcement.

- (37) "Observation interval" means an interval of time including the four consecutive calendar years preceding the calendar year in which an application for a seasonal determination is made pursuant to G.S. 96-16. In the case of a newly liable employer or an employer whose operational activities have changed, the observation interval may be less than four calendar years.
- (38) "Official record" means information in the records of a state or state unemployment compensation agency that pertains to the administration of the unemployment insurance program. Official records include claim information, wage information, confidential information, and unemployment compensation information as defined in 20 C.F.R. 603.2, which is incorporated by reference, and includes subsequent amendments and editions of the referenced material. This material is available, free of charge, at <http://www.ecfr.gov>. Official records also include information provided by a federal, state, or private entity, or a claimant or employer for reliance upon, or use by the state in administering its unemployment insurance program.
- (39) "Party with appeal rights" means a party who has the right to appeal an unfavorable determination or decision pursuant to G.S. 96-4(q) and G.S. 96-15.
- (40) "Public employment office" means a local office managed and operated by the Division of Workforce Solutions (DWS) of the North Carolina Department of Commerce.
- (41) "Regularly recurring" means a period or periods of operational activity and shall be deemed regularly recurring if, during at least seventy-five percent of the calendar years in the observation interval, the beginning and ending dates of the period or periods do not vary more than four weeks.
- (42) "Reopened claim" means the resumption of a valid initial claim following a break in filing weekly certifications during a benefit year and the break was caused by reasons other than intervening employment. The first week of eligibility following the effective date of the reopened claim shall constitute a waiting period week if all eligibility requirements set forth in G.S. 96-14.9 are met.
- (43) "Reporting cycle" means the 52 week period beginning August 1<sup>st</sup> and ending July 31<sup>st</sup> the following year in which the employer's account is examined and recorded for any inadequate responses to Requests for Separation Information (NCUI 500AB).
- (44) "SCUBI" is an acronym, and means the Southeast Consortium Unemployment Benefits Initiative referenced in G.S. 96-40(b)(1). SCUBI is a multi-state consortia consisting of North Carolina, South Carolina, and Georgia.
- (45) "SIDES" is an acronym, and means the State Information Data Exchange System. SIDES is a secure, nationally standardized, web based system that allows electronic transmission of information requests from DES to employers or third party administrators, as well as electronic transmission of replies containing the requested information back to DES.
- (46) "State" means any of the 50 states in the United States and includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
- (47) "Valid email address" means a unique identifier for an email account that is used to send and receive messages over the internet, and is composed of three parts: the user name, the "at symbol" (@), and the domain. To be valid, an email address shall be one to which DES can send emails, and shall be provided to DES for use by the claimant, employer, legal representative, or other authorized representative of the claimant or employer. The most recent email address provided to DES shall be maintained in DES's records, as the claimant's or employer's official email address.
- (48) "Wages paid" means both wages actually received by a worker, and wages "constructively paid." Wages are constructively paid when they are credited to the account of, or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made, and shall be made available so that the worker may draw upon them at any time, and payment brought within the worker's control and disposition, although not reduced to possession.
- (49) "Wages payable" means wages earned but not paid.
- (50) "Weekly period" means a seven day period beginning at 12:00 a.m. Sunday and ending on the following Saturday at 11:59 p.m.
- (51) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits for the week are claimed.

*History Note:* Authority G.S. 84; 96-1; 96-4; 96-9.2; 96-9.6; 96-14.1; 96-14.9; 96-15; 96-17; 96-20; Eff. July 1, 2015;

*Temporary Amendment Eff. March 1, 2016;  
Temporary Amendment Expired December 10, 2016;  
Amended Eff. September 1, 2017; April 1, 2017.*

#### **04 NCAC 24A .0106 FILING/MAILING DATES AND USE OF FORMS**

- (a) Except as otherwise provided in this Chapter, a document or form shall be filed with DES on the date the document or form is received by DES.
- (b) When a filing deadline or due date for a form or payment falls on a Saturday, Sunday, or State holiday as set forth in 25 NCAC 01E .0901, the deadline or due date shall be extended to the first business day following the Saturday, Sunday, or State holiday.
- (c) When determining whether a party had good cause for filing a late appeal or protest, DES shall consider the date mailed in the order listed:
- (1) the postmark date or the postal meter date, where there is only one;
  - (2) the postmark date if there is both a postmark date and a postal meter date, if they conflict; or
  - (3) the date the document was delivered to a delivery service, which is equivalent to a postmark date of the United States Postal Service.
- (d) A document received in an envelope bearing no legible postmark, postal meter date, or date of delivery to the delivery service shall be considered to have been sent three business days before receipt by DES, or on the date of the document, if the document date is less than three days earlier than date of receipt.
- (e) If the envelope is lost after delivery to DES, the date on the document shall control. If the document is undated, DES shall deem the date the writing was sent to be three business days prior to receipt by DES, subject to sworn testimony establishing an earlier date from the sender of the writing.
- (f) Except as otherwise provided in this Chapter, the date and time that DES receives a document shall be used when the document is sent by facsimile transmission or via the internet.
- (g) Except as otherwise provided in this Chapter, when a document furnishes information that is sufficient to indicate the purpose or intent of the document, but is not on a form prescribed by DES, the controlling date shall be determined as described in this Section.

*History Note: Authority G.S. 1A-1, Rule 6; 96-4;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.*

#### **04 NCAC 24A .0107 DIGITAL SIGNATURES**

A digital signature provided by an employing unit or claimant shall authenticate a written electronic communication sent to DES with the same force and effect as that of a manual signature by the person or individual using it. The digital signature shall have the following characteristics:

- (1) unique to the person or individual using it;
- (2) ability to be independently verified;
- (3) under the sole control of the person or individual using it; and
- (4) infeasible to change the data in the communication without invalidating the digital signature.

*History Note: Authority G.S. 96-4; 96-9.15;  
Eff. July 1, 2015.*

#### **04 NCAC 24A .0108 SIGNATURES ON REPORTS AND FORMS**

Where DES requires a signature on a report or form, the writing shall be signed by:

- (1) the individual, if the person required to submit the report or form is an individual;
- (2) the president, vice president, or other officer if the employing unit required to submit the report or form is a corporation;
- (3) a partner, if the employing unit required to submit the report or form is a partnership or limited liability partnership;
- (4) a member, if the employing unit required to submit the form is a limited liability company or professional limited liability company;
- (5) an authorized member or officer having knowledge of its affairs, if the employing unit required to submit the report or form is an unincorporated organization;
- (6) the fiduciary, if the employing unit required to submit the report or form is a trust or estate;

- (7) an authorized representative of a governmental entity; or
- (8) an agent appointed by the employing unit under a power of attorney in accordance with 04 NCAC 24A .0109.

*History Note:* Authority G.S. 96-4; 96-9.15;  
Eff. July 1, 2015;  
Amended Eff. June 1, 2022.

**04 NCAC 24A .0109 POWER OF ATTORNEY**

(a) An employer may appoint an agent with authority to act on his, her, or its behalf with DES in accordance with G.S. 32C-2-214. An employer's appointment of an agent shall be made in writing in the manner prescribed by G.S. 32C-3-301, or by using the Power of Attorney and Declaration of Representative form found on DES's website.

(b) An agent appointed pursuant to a power of attorney may:

- (1) complete and submit documents for filing employers' tax and wage reports;
- (2) complete and submit documents regarding an employer's tax rate, contributions, and direct reimbursements;
- (3) respond to benefit claims documents, including responding to requests for information about a claimant's separation or status;
- (4) engage in discussions with DES representatives regarding the actions listed above; and
- (5) accept or receive correspondence sent by DES regarding claims for benefits or an employer's contributions.

*History Note:* Authority G.S. 32C-2-214; 32C-3-301; 96-4; 96-9.15;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018; September 1, 2017.

**04 NCAC 24A .0110 LIMITATION ON AUTHORITY GRANTED BY POWER OF ATTORNEY**

(a) A representative authorized to act for a claimant or employer pursuant to a power of attorney shall not enter appeals or protests from any decisions made by an adjudicator, appeals referee, hearing officer, the Assistant Secretary, the Board of Review, or any other employee authorized to act on behalf of DES or the Board of Review, unless the representative is qualified to serve as a legal representative pursuant to G.S. 96-17(b).

(b) A representative authorized to act for a claimant or employer pursuant to a power of attorney may appear as a witness, but shall not represent the claimant or employer in any hearings conducted by DES, the Board of Review, or any employee designated to act on behalf of DES or the Board of Review.

(c) An individual authorized to act as a legal representative in a hearing before an Appeals Referee shall submit notice in writing to the Appeals Referee in accordance with 04 NCAC 24C .0302.

(d) An individual authorized to act as a legal representative in a hearing before the Board of Review, or to enter an appeal or protest before the Board of Review, shall submit notice in writing in accordance with 04 NCAC 24F .0204.

*History Note:* Authority G.S. 84-2.1; 84-4; 84-4.1; 84-5; 96-4; 96-17;  
Eff. September 1, 2017.

**SECTION .0200 - REQUESTS FOR DOCUMENTS AND RECORDS UNRELATED TO PENDING APPEAL OR CONTESTED CASE**

**04 NCAC 24A .0201 WRITTEN REQUEST REQUIRED**

Any individual or employing unit requesting to inspect or copy any record containing confidential unemployment insurance information shall make the request in writing. All requests shall be submitted to the Legal Services Section, ATTN: Legal Release by mail to Post Office Box 25903, Raleigh, North Carolina, 27611-5903, by facsimile to (919) 715-7194, or by email to legal.release@nccommerce.com.

*History Note:* Authority G.S. 96-4; 20 CFR 603.5;  
Eff. July 1, 2015;  
Amended Eff. March 1, 2020; July 1, 2018.

#### **04 NCAC 24A .0202 CLEAR DESCRIPTION OF RECORDS REQUIRED**

- (a) Each written request for unemployment insurance information shall describe the record or records sought and provide sufficient details to permit identification and location of the records.
- (b) The request shall specify:
- (1) the subject matter of the record;
  - (2) the date or approximate date that the record was made;
  - (3) the place where the record was made;
  - (4) the person or office that made the record; and
  - (5) any other necessary identifying details about the record, such as an account or form number.
- (c) If the description is insufficient for an employee familiar with the subject area of the request to locate the record, the Chief Counsel or designee shall notify the person making the request and indicate the additional information required to locate the record.

*History Note* Authority G.S. 96-4; 20 CFR 603.5;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24A .0203 DETERMINATION AS TO DISCLOSURE**

- (a) If the Chief Counsel or designee determines that the applicable law does not permit disclosure of the requested information, the Chief Counsel or designee shall provide written notification to the person making the request. The notice shall state reasons for the denial, including the applicable law prohibiting disclosure.
- (b) Where there is specific information in a record that is prohibited from disclosure, the specific information shall be deleted or redacted before providing the requested record.

*History Note:* Authority G.S. 96-4; 20 CFR 603.5;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24A .0204 RELEASE OF INFORMATION TO THIRD PARTY**

- (a) Upon written request, a claimant, employer, applicant, or other person who authorizes information or records to be released to a third party or person shall provide:
- (1) the name of the third party or person;
  - (2) the address of the third party or person; and
  - (3) a statement that the claimant, employer, applicant, or other person authorizing the disclosure of information waives confidentiality as to the information directed to be released.
- (b) An individual requesting that DES release or disclose to a third party or person the individual's quarterly wage records, including the amount of wages and names of each employer reporting wages for the individual shall:
- (1) identify the third party or person by name;
  - (2) provide the address of the third party or person;
  - (3) contain a statement that the individual waives confidentiality as to the information authorized to be disclosed to the identified third party; and
  - (4) state that the authorization and waiver is given on the basis of informed consent as mandated by 20 CFR 603.5 and any other applicable federal regulation that may be promulgated by the U.S. Department of Labor.

*History Note:* Authority G.S. 96-4; 20 CFR 603.5;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24A .0205 FEES FOR COPIES AND SERVICES**

- (a) Search Fees:
- (1) The fee for searching DES records by authorized staff shall be four dollars and forty cents (\$4.40) for each one-quarter hour or fraction thereof required to obtain the records to be searched or to search the records.

- (2) If the search for requested records requires transportation of DES staff to the location of the records, or transportation of the records to DES staff at a cost of more than five dollars (\$5.00), the actual transportation costs shall be added to the search time cost.
  - (3) If the search for requested records requires batch processing by computer, the Chief Counsel or designee shall provide an estimate of DES's cost to produce the information to the individual making the request. The amount of the estimate provided shall be based on the computer programming and other actions necessary for the batch processing. Upon consenting to the estimate provided by the Chief Counsel or designee, DES shall send an invoice for the actual cost of producing the requested information to the individual making the request.
- (b) **Reproduction Fees:** The fees for obtaining copies of records shall be computed as follows:
- (1) copying: one cent (\$0.01) per page;
  - (2) transcription of hearing: three dollars and seventy-five cents (\$3.75) per quarter hour or fraction thereof; and
  - (3) recording of hearing: three dollars and seventy-five cents (\$3.75) per compact disk or recording.
- (c) No more than 10 copies of any document shall be furnished in response to any request.
- (d) **Administrative and Overhead Fees:** The fee required for the time required for the Chief Counsel or designee to review a request and determine whether the request is authorized by G.S. 96-4 shall be five dollars and eighty-four cents (\$5.84) for each one-quarter hour or fraction thereof. The overhead cost for processing and invoicing shall be four dollars and fifty cents (\$4.50) per invoice.
- (e) Any individual receiving records from DES under this Section shall be charged a minimum fee of fifteen dollars (\$15.00).

*History Note:* Authority G.S. 96-4; 20 CFR 603.8;  
 Eff. July 1, 2015;  
 Amended Eff. July 1, 2018.

**04 NCAC 24A .0206 METHOD OF PAYMENT**

Payment of fees for the release of records unrelated to a pending matter or contested case shall be made to DES in accordance with 04 NCAC 24A .0104(aa).

*History Note:* Authority G.S. 96-4; 20 CFR 603.8;  
 Eff. July 1, 2015;  
 Amended Eff. August 1, 2020; July 1, 2018.

**04 NCAC 24A .0207 PAYMENT REQUIRED BEFORE INFORMATION RELEASE**

- (a) Payment shall accompany all requests for release of information. If payment does not accompany a request, or is insufficient to cover all fees, DES shall send an invoice for all fees due to the individual making the request, due immediately upon receipt.
- (b) If the search for requested records exceeds the minimum fee under 04 NCAC 24A .0205, the Chief Counsel or designee shall provide an estimate of DES's cost to produce the information to the individual making the request. Upon consenting to the estimate provided by the Chief Counsel or designee, DES shall send an invoice for the actual cost of producing the requested information to the individual making the request. Payment shall be due immediately, as set forth in Paragraph (a) of this Rule.
- (c) When exigent circumstances require the immediate release of information to local, state, or federal law enforcement officials, DES shall release the information upon receipt of a written assurance demonstrating a guaranty of future payment from the law enforcement official making the request.

*History Note:* Authority G.S. 96-4; 20 CFR 603.8;  
 Eff. July 1, 2015;  
 Amended Eff. July 1, 2018.

**SECTION .0300 – PETITIONS FOR RULE-MAKING**

**04 NCAC 24A .0301 RIGHT TO PETITION**

- (a) The petition shall be in writing and contain the following information:
  - (1) the subject area to which the petition is directed;

- (2) a draft of the proposed or amended rule;
- (3) the reason for the proposal;
- (4) the effect of the requested rule change;
- (5) any data supporting the proposal;
- (6) the name and address of each petitioner; and
- (7) the date.

(b) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DES Legal Services Section, Post Office Box 25903, Raleigh, North Carolina 27611-5903.

*History Note:* Authority G.S. 96-4; 150B-20;  
Eff. July 1, 2015.

#### **04 NCAC 24A .0302 DISPOSITION OF PETITION**

- (a) Upon receipt of a petition, the Secretary of Commerce, or designee shall review the petition to determine whether the public interest would be served by granting the request.
- (b) Within 30 days of receiving the petition, the Secretary or designee shall make a decision on the petition and inform the petitioner by mailing:
  - (1) a written denial of the petition and the reason for the denial; or
  - (2) written notice to the petitioner that the Secretary or designee will initiate a rule-making proceeding as required by G.S. 150B-20(c).
- (c) Each determination granting or denying a petition shall include a statement that the Secretary or designee's decision is a final agency decision subject to judicial review.
- (d) Each determination shall include instructions for filing a request for judicial review in the superior court pursuant to G.S. 150B-45 within 30 days after receiving the determination.

*History Note:* Authority G.S. 96-4; 150B-20; 150B-45;  
Eff. July 1, 2015.

#### **04 NCAC 24A .0400 RESERVED FOR FUTURE CODIFICATION**

### **SECTION .0500 – REQUESTS FOR DOCUMENTS, HEARING RECORDS, AND TRANSCRIPTS RELATED TO PENDING APPEAL OR CONTESTED CASE**

#### **04 NCAC 24A .0501 WRITTEN REQUEST REQUIRED**

- (a) A party requesting a copy of file documents, a digital recording of a hearing, or a written transcript of a hearing in a matter where an appeal is pending shall submit the request in writing.
- (b) A party's written request for a copy of the file documents, digital recording of the hearing, or written transcript of the hearing shall include:
  - (1) the name and address of the party making the request;
  - (2) the claimant's name, if applicable;
  - (3) the employer's name, if applicable;
  - (4) the docket or issue identification number of the case;
  - (5) the date of or approximate date that the record was made;
  - (6) the person or office that made the record; and
  - (7) the name and address to which the record shall be sent.
- (c) When a party has requested a written transcript, any other party with appeal rights to the proceeding may request a copy of the transcript. The request shall meet the requirements of Paragraphs (a) and (b) of this Rule.
- (d) The request may accompany or be included in an appeal letter. Requests may also be submitted to the Legal Services Section, ATTN: Request for Hearing Record by mail to Post Office Box 25903, Raleigh, North Carolina, 27611-5903, or by facsimile to (919) 733-8745.
- (e) Requests for file documents, digital recordings, or hearing transcripts from any individual or entity who is not a party with appeal rights in the proceeding shall be evaluated pursuant to Section .0200 of this Subchapter.
- (f) Requests for file documents, digital recordings, or hearing transcripts in a matter where appeal rights have expired and the decision became final shall be made in accordance with Section .0200 of this Subchapter.



*History Note:* Authority G.S. 96-4; 96-15; 20 CFR 603.5;  
Eff. August 1, 2020.

#### **04 NCAC 24A .0502 INDIGENCY**

(a) A party who is unable to provide payment assurance with a written transcript request pursuant to 04 NCAC 24A .0501 may proceed in forma pauperis. The party may obtain a transcript if the request is accompanied by a written affidavit stating that he or she is unable to advance the required costs, and proof pursuant to Paragraph (b) of this Rule.

(b) The Chief Counsel or designee shall authorize release of the transcript to an indigent party if the person submits the required affidavit and meets one or more of the following criteria:

- (1) receives electronic food and nutrition benefits;
- (2) receives Work First Family Assistance;
- (3) receives Supplemental Security Income (SSI);
- (4) is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons;
- (5) is represented by private counsel working on behalf of or under the auspices of a legal services organization in accordance with Subparagraph (4) of this Paragraph; or
- (6) is represented by private counsel under a written agreement to provide pro bono legal services.

*History Note:* Authority G.S. 1-110; 96-4; 96-15;  
Eff. August 1, 2020.

#### **04 NCAC 24A .0503 INVOICE AND FEES**

(a) A party who requests a copy of the file documents or a digital recording in a pending appeal or contested case under this Section shall be provided with the file documents and digital recording free of charge.

(b) A request for a written transcript of the hearing shall include payment assurance by stating that the requesting party will pay the fee for the transcript in accordance with 04 NCAC 24A .0104(z) or (aa). Payment is due upon receipt, but no more than 15 days after the date that the transcript was mailed or transmitted to the party.

(c) A party who requests a written transcript of a hearing but does not provide payment assurance in accordance with 04 NCAC 24A .0104(z) or (aa) shall receive a digital recording of the hearing free of charge.

(d) A party who requests a written transcript of a hearing with payment assurance as set forth in 04 NCAC 24A .0104(z) or (aa) shall receive a written transcript. An invoice for the fees charged by DES shall accompany the transcript and shall not exceed the lesser of sixty-five cents per page or sixty-five dollars (\$65.00) per transcript pursuant to G.S. 96-15(f).

(e) Payment for transcripts under this Section shall include the invoice number and be made in accordance with 04 NCAC 24A .0104(z) or (aa).

*History Note:* Authority G.S. 96-4; 96-15; 20 CFR 603.8;  
Eff. August 1, 2020.

#### **04 NCAC 24A .0504 DISCLOSURE OF RECORDS RELATED TO PENDING APPEAL OR CONTESTED CASE**

(a) The Chief Counsel or designee shall transmit a copy of the requested record to the requesting party by mail, unless the party requests or authorizes delivery by electronic transmission or delivery service in accordance with 04 NCAC 24A .0103.

(b) A party who files an appeal to the superior court from a decision of the Board of Review regarding the rights, liabilities, and status of an employer and complies with the requirements of G.S. 96-4 shall receive a copy of the transcript of all testimony, records, evidence, and assignment of errors free of charge when it is transmitted to the court in accordance with G.S. 96-4(q).

(c) A party who files a petition for judicial review and complies with the requirements of G.S. 96-15 shall receive a copy of the transcript and entire record under review free of charge when it is transmitted to the court in accordance with G.S. 96-15(h).

*History Note:* Authority G.S. 96-4; 96-15; 20 CFR 603.5;  
Eff. August 1, 2020.

## SECTION .0600 – FORMS

### 04 NCAC 24A .0601 OFFICIAL FORMS

(a) Unless otherwise provided, all employer forms referenced under the rules of this Chapter are available at [des.nc.gov](http://des.nc.gov), or by contacting the Employer Call Center (ECC) as follows:

- (1) mailing address is Post Office Box 26504, Raleigh, North Carolina 27611;
- (2) phone number is (919) 707-1150;
- (3) facsimile number is (919) 715-0780; or
- (4) email address is [des.tax.customerservice@nccommerce.com](mailto:des.tax.customerservice@nccommerce.com).

(b) Unless otherwise provided, all claimant forms referenced under the rules of this Chapter are available at [des.nc.gov](http://des.nc.gov), or by contacting the Customer Call Center (CCC) as follows:

- (1) mailing address is P.O. Box 25903, Raleigh, North Carolina 27611-5903;
- (2) phone number is (888) 737-0259;
- (3) facsimile number is (919) 250-4315; or
- (4) email address is [des.ui.customerservice@nccommerce.com](mailto:des.ui.customerservice@nccommerce.com).

*History Note: Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1401 Eff. August 1, 2020;  
Amended Eff. August 1, 2020.*

## 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](http://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 longshoremen.

- (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](http://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](http://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](http://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.*

## SUBCHAPTER 24C - INITIAL APPEALS FROM DETERMINATION

### SECTION .0100 – GENERAL INITIAL APPEALS INFORMATION

#### **04 NCAC 24C .0101 APPEAL DATE ESTABLISHED BY TESTIMONY**

- (a) A party shall be allowed to establish an appeal date earlier than a postal meter date, or the date of a document only in the face of clear and convincing evidence.
- (b) When a party alleges filing an appeal that DES never received, the party shall present clear and convincing evidence of a timely filing, which may be corroborated by testimony or physical evidence linked to the appeal in question.
- (c) The Appeals Referee shall allow cross-examination to establish timeliness of an appeal consistent with 04 NCAC 24A .0106.

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

#### **04 NCAC 24C .0102 TIMELINESS EXCEPTION**

Timeliness sanctions shall be waived by the Appeals Referee when DES or an agent state representative gives misleading information on appeal rights to a party, if the party:

- (1) establishes what he or she was told was misleading and how he or she was misled, pursuant to the procedures in 04 NCAC 24C .0101;
- (2) identifies, if possible, the individual who misled him or her; and
- (3) establishes that DES did not provide the party with any written instructions contrary to the misleading information with service of the decision being appealed.

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

#### **04 NCAC 24C .0103 BASE PERIOD EMPLOYER DENIED NONCHARGING**

A base period employer who was not the claimant's last employer may file an appeal from a determination denying noncharging of benefits to its account as provided in 04 NCAC 24A .0104(s). The claimant is not a party with appeal rights in this appeal.

*History Note:* Authority G.S. 96-4; 96-11.3; 96-11.4;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24C .0104 EMPLOYER PARTY TO DETERMINATION**

An employer may file an appeal from a determination that affects a claimant's entitlement to benefits if the employer is a party to the determination. Only one employer shall be a party with appeal rights to a proceeding.

- (1) An employer named as the last employer on an initial claim shall be a party to a determination ruling on the merits of the claimant's separation from employment and other specific issues raised by the employer regarding the claimant's entitlement to benefits.
- (2) An employer named as the last employer on an additional or continued claim shall be a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:
  - (A) was the employer named as the last employer on the claimant's initial claim; or
  - (B) is a base period employer whose account has been ruled subject to charging of benefits.
- (3) A reimbursing employer named as the last employer on an additional or continued claim shall be a party to a determination ruling on the merits of that additional or continued claim regarding separation from employment or other specific issues raised by the employer if the employer:
  - (A) was the employer named as the last employer on the claimant's initial claim; or
  - (B) is a base period employer.

- (4) If an employer, during a claimant's benefits year, provides DES with information that raises specific issues, including a potential disqualification, ineligibility, allegations of fraud, or other issues that affect a claimant's entitlement to benefits, the employer shall be a party with appeal rights to a determination ruling on the merits of the specific issue raised by the employer if the employer is:
  - (A) named as the last employer on the claimant's initial claim;
  - (B) a base period taxed employer whose account has been ruled subject to charging of benefits, even if that employer was named as the last employer on the claimant's initial claim and did not timely respond to notice of the claimant's initial claim; or
  - (C) a base period reimbursing employer.
- (5) An employer against whom a claimant has alleged entitlement to additional base period wages shall be a party with appeal rights to that issue.

*History Note:* Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15;  
Eff. July 1, 2015.

## **SECTION .0200 – INITIAL APPEALS HEARING**

### **04 NCAC 24C .0201 APPEARANCE BY PARTY**

An appearance by a party to an appeals hearing includes offering testimony, questioning witnesses, and presenting oral arguments. A submission of written documents or observation of the proceedings shall not constitute an appearance.

- (1) A party or witness shall appear by telephone when the party participates in the telephone conference call with the Appeals Referee on the date and time of the hearing and participates in the proceedings.
- (2) A party or witness shall appear in person at the location on the date and times scheduled for the in-person hearing, and participate in the proceedings.
- (3) An individual shall appear at an in-person/telephone hearing as provided in 04 NCAC 24C .0213 on the date and time of the hearing and participate in the proceedings.

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

### **04 NCAC 24C .0202 PRESENTING AND SCHEDULING APPEALED CLAIMS**

A party wishing to appeal from an adjudicator's determination shall file an appeal pursuant to Rule 04 NCAC 24A .0104(b).

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

### **04 NCAC 24C .0203 CONTENTS OF APPEAL TO APPEALS SECTION**

A party's written appeal shall contain the following:

- (1) the date of the appeal;
- (2) the docket or issue identification number of the determination being appealed;
- (3) the claimant's identification number;
- (4) the names of the claimant and employer;
- (5) each reason for the appeal;
- (6) the name of the individual filing the appeal;
- (7) the official position, if any, of an individual filing the appeal on behalf of the party; and
- (8) a telephone number.

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

#### **04 NCAC 24C .0204 APPEALS HEARING NOTICE**

(a) The Appeals Section shall mail notice of the hearing to each party at least 14 days before the hearing date.

(b) A party who elects to receive correspondence and notices by electronic transmission shall receive an email notification, at least 14 days before the hearing date, indicating that the hearing notice is available in their SCUBI account.

(c) Notice of the hearing shall include:

- (1) the determination appealed;
- (2) the appealing party;
- (3) the time of the hearing;
- (4) the date of the hearing;
- (5) if requested at the time of filing the appeal, the physical location of an in-person hearing;
- (6) the telephone number of each party for telephone hearings;
- (7) each issue, with statutory reference, to be heard and decided;
- (8) the name and contact information of the designated Appeals Referee;
- (9) the manner by which witnesses may offer evidence and participate in the hearing;
- (10) each party's right to legal representation;
- (11) instructions for requesting a rescheduling of the hearing pursuant to 04 NCAC 24C .0207;
- (12) each party's right to request the issuance of a subpoena for the production of records or for individuals to appear and testify, as well as instructions for making these requests pursuant to 04 NCAC 24C .0401;
- (13) instructions on how to request an in-person hearing;
- (14) instructions on how to give evidence at a hearing pursuant to 04 NCAC 24C .0209;
- (15) notice that documents accompanying the hearing notice are available in their SCUBI account; and
- (16) instructions that if the individual's telephone number is not listed or is incorrect to contact the Appeals Referee prior to the scheduled start time of the hearing to provide the correct telephone number pursuant to 04 NCAC 24C .0205.

(d) The determination, the written appeal, the claimant's application for unemployment insurance, the employer's response to claimant's application for unemployment insurance, if any, and any documents provided to the Appeals Section with the appeal shall accompany the hearing notice. If a party desires to introduce additional documents or other evidence, e.g., audio or video recordings, photographs, or screenshots, at a hearing, the party shall submit the additional documents or other evidence to the Appeals Referee or hearing officer and to all other parties prior to the hearing in accordance with 04 NCAC 24C .0209(a), (c), and (d).

*History Note: Authority G.S. 96-4; 96-15;  
Eff. July 1, 2015;  
Amended Eff. June 1, 2022; September 1, 2017.*

#### **04 NCAC 24C .0205 TELEPHONE HEARINGS**

(a) Hearings shall be conducted by telephone conference call, unless a request is made for an in-person hearing at the time the appeal is filed or an objection is made pursuant to Rule .0206 of this Section.

(b) The Appeals Hearing Notice will list a telephone number for each party. This is the telephone number the Appeals Referee will call unless a different telephone number is provided in accordance with this Rule.

- (1) If no telephone number is listed for a party, that party shall provide a telephone number directly to the Appeals Referee prior to the scheduled start time of the hearing.
- (2) If a party wishes to be called at a telephone number other than the one listed, that party shall provide a telephone number directly to the Appeals Referee prior to the scheduled start time of the hearing.
- (3) If a party wishes to have witnesses called for participation in the hearing, that party shall provide the name and telephone number for each witness directly to the Appeals Referee prior to the scheduled start time of the hearing.

(c) Telephone numbers for parties and additional witnesses shall be provided to the Appeals Referee by telephone or by email. The telephone number and email address for the Appeals Referee are listed on the Appeals Hearing Notice.

(d) If a party fails to provide a telephone number to the Appeals Referee prior to the scheduled start time of the hearing, the Appeals Referee shall call the party at the telephone number listed on the Appeals Hearing Notice. If no

telephone number is listed for a party, and no number has otherwise been provided in accordance with this Rule, no call will be placed to that party for the hearing.

*History Note:* Authority G.S. 96-4; 96-15;  
Eff. July 1, 2015;  
Amended Eff. June 1, 2022; October 1, 2017.

#### **04 NCAC 24C .0206 IN-PERSON HEARINGS**

- (a) A party may request an in-person hearing:
- (1) at the time the appeal is filed; or
  - (2) by filing a written objection to the telephone conference call to:
    - (A) the Appeals Section as provided for in 04 NCAC 24A .0104; or
    - (B) the designated Appeals Referee using the contact information provided on the hearing notice.
- (b) If travel is required to conduct the in-person hearing, the objecting party shall be required to travel to a location convenient to the non-objecting party and where the Division regularly conducts in-person hearings as determined by the Appeals Referee based on each party's location.

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

#### **04 NCAC 24C .0207 RESCHEDULING A HEARING**

- (a) An Appeals Referee may continue a hearing for "good cause" as defined in 04 NCAC 24A .0105. In addition to the reasons set forth in G.S. 96-15(d1), the reasons for which a continuance may be granted include, but are not limited to, the following:
- (1) illness; ;
  - (2) death of an immediate family member. Immediate family member is defined as an individual's wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, regardless of whether the relationship is a biological, adoptive, step-, half-, or in-law relationship;
  - (3) a need to obtain an interpreter or translator;
  - (4) a religious observance;
  - (5) jury duty;
  - (6) actively seeking legal representation;
  - (7) appearance in another proceeding before the Division or the Board of Review;
  - (8) active military duty;
  - (9) a scheduling conflict created by or to accommodate return-to-employment activities of the claimant;
  - (10) to accommodate the business needs of the employer;
  - (11) a scheduling conflict of the Appeals Referee; or
  - (12) based on the operation and scheduling needs of the Appeals Section.
- (b) Any request for continuance by a party prior to the hearing shall be made in writing to the Appeals Referee listed on the Appeals Hearing Notice, or where applicable, Order for Continuance or Order for Adjournment. The written request shall explain the reasons the request is being sought.
- (c) Unless the parties are notified by the Appeals Referee or the Appeals Section that a request for continuance has been granted, the hearing will be conducted as scheduled.

*History Note:* Authority G.S. 96-4; 96-15;  
Eff. July 1, 2015;  
Amended Eff. June 1, 2022.

#### **04 NCAC 24C .0208 DISQUALIFICATION OF APPEALS REFEREE**

- (a) An Appeals Referee shall be free of any personal interest or bias in the appeal over which he or she is presiding.
- (b) An Appeals Referee shall not participate in hearing an appeal in which that Appeals Referee has a personal interest in the outcome of the appeals decision.

- (c) An Appeals Referee may recuse himself or herself from a hearing to avoid the appearance of impropriety or partiality.
- (d) A pre-hearing challenge to the impartiality of a designated Appeals Referee shall be in writing, addressed to the Chief Appeals Referee as provided in 04 NCAC 24A .0104(b), and shall be heard and decided by the Chief Appeals Referee or designee.
- (e) The Chief Appeals Referee or designee's decision on any pre-hearing challenge to the impartiality of an assigned Appeals Referee shall be in writing and mailed to the parties.

*History Note:* Authority G.S. 96-4; 96-15; 20 CFR 650.2;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24C .0209 CONDUCT OF HEARINGS**

- (a) Hearings may be conducted by a Hearing Officer or an Appeals Referee, including the Chief Appeals Referee and the Deputy Chief Appeals Referee. Consistent with G.S. 96-15(f), all hearings shall be conducted in a manner to preserve the substantial rights of the parties.
  - (1) The parties to an appeal before an Appeals Referee have the right to present relevant and material evidence as determined by the Appeals Referee.
  - (2) The Appeals Referee may ask questions to develop the record as to the relevant facts, circumstances, and issues presented at the hearing.
  - (3) The Appeals Referee may examine parties and witnesses, and shall allow cross-examination.
  - (4) All issues relevant to the appeal shall be considered and ruled upon.
- (b) The Appeals Referee shall give each party 10 minutes from the time of the scheduled hearing to appear for the hearing. If the appealing party fails to appear at the hearing and a continuance had not been previously granted, the Appeals Referee shall issue an Appeals Decision dismissing the appeal. If the appealing party appears and the non-appealing party fails to appear, the Appeals Referee shall proceed with the hearing .
- (c) If a party wishes to introduce documents or other evidence not provided by the Appeals Section with the Appeals Hearing Notice, the party shall provide a copy to the Appeals Referee and to all other parties prior to the hearing.
- (d) Any party propounding in excess of 25 pages of documents, photographs, or screen shots shall number and paginate each exhibit, and provide an index listing each exhibit and its corresponding page number, which will become part of the official record.
- (e) Official notice may be taken by the Appeals Referee of all facts for which judicial notice may be taken as well as other facts within the specialized knowledge of the DES. The official notice and its source shall be stated on the record. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence on the record.

*History Note:* Authority G.S. 96-4; 96-15; 20 CFR 650.2;  
Eff. July 1, 2015;  
Amended Eff. June 1, 2022.

#### **04 NCAC 24C .0210 HEARSAY**

- (a) Hearsay evidence shall be accepted as credible evidence only when it:
  - (1) falls within the statutory or common law exceptions to the hearsay rules; or
  - (2) has an equivalent indicia of trustworthiness as competent evidence; and
  - (3) is more probative on the point for which it is offered than any other evidence which the party offering the hearsay could reasonably be expected to procure.
- (b) The Appeals Referee may permit the parties to file an affidavit at the time of the hearing in the same manner as applicable to other hearsay evidence.

*History Note:* Authority G.S. 8C, Art. 8; 96-4; 96-15;  
Eff. July 1, 2015.

#### **04 NCAC 24C .0211 CONTROLLED SUBSTANCE RESULTS**

In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from an authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody, or compliance with all testing or retesting required by federal or state law.

- (1) When a party desires to introduce the affidavit at the hearing, a copy of the affidavit shall be received by the party against whom the affidavit will be offered at least two days before the hearing.
- (2) If the party who desires to introduce the affidavit is unable, despite reasonable efforts, to accomplish the required service within the time specified, the Appeals Referee may adjourn or continue the hearing to allow such service to be accomplished. However, the Appeals Referee shall not continue the hearing if the party against whom the affidavit is offered has refused to accept service or has taken other steps to avoid or delay receipt of the affidavit.
- (3) At the hearing, the party shall offer an authenticated copy of the affidavit as an exhibit.
- (4) If the party against whom the affidavit is offered objects to the entry of the affidavit into the official

record, the objecting party may request an adjournment or continuance of the hearing to subpoena the author of the affidavit. The affidavit's author shall be permitted to testify by telephone at the reconvened hearing.

- (5) Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, the Appeals Referee may, in his or her discretion, base findings of fact on the affidavit.
- (6) The results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements shall be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit.

*History Note:* Authority G.S. 95-230; 95-231; 95-232; 95-233; 95-234; 95-235; 96-4; 96-15;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24C .0212 CONTENTS OF APPEALS DECISION**

(a) The Appeals Decision shall include:

- (1) the names of the individuals present for the hearing;
- (2) findings of fact necessary for a resolution of the appeal;
- (3) the applicable statutory provisions;
- (4) conclusions of law;
- (5) the name of the Appeals Referee who conducted the hearing and rendered the decision; and
- (6) notice of each party's right to file an appeal of the Appeals Decision and the time period for filing an appeal.

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

#### **04 NCAC 24C .0213 COMBINATION TELEPHONE AND IN-PERSON HEARINGS**

(a) The Appeals Referee may conduct an in-person/telephone hearing to avoid prejudice, to ensure security, to comply with standards for appeal promptness, or to expedite an appeal.

(b) A party may obtain an in-person/telephone hearing by filing a written objection to a telephone conference call hearing notice pursuant to 04 NCAC 24C .0205, or to an in-person hearing notice pursuant to 04 NCAC 24C .0206.

- (1) The objection shall state each reason that the party objects to appearing in the manner listed in the hearing notice.
- (2) The objecting party shall state the manner in which it, or its witnesses, request to appear for the hearing.
- (3) This request shall be directed to the Appeals Section as provided in 04 NCAC 24A .0104(b), or to the designated Appeals Referee using the contact information provided in the hearing notice.

(c) The Appeals Referee shall consider a party's request to change its witnesses' appearance from a telephone or in-person hearing, and shall make a determination of whether the substantial rights of each party would be preserved by granting the party's request.

(d) The Appeals Referee may grant a request to change an appearance by telephone or in-person for good cause as defined in 04 NCAC 24A .0105. If the request is granted, the official hearing record shall include the written request

for the change, reflect the Appeals Referee's determination that the substantial rights of each party would be preserved by granting the request, and each reason for the determination.

(e) The objecting party shall appear in person or by telephone as requested by the objecting party if the Appeals Referee grants the request.

(f) The Appeals Referee may deny a request to change a party's appearance at a hearing to telephone or in-person if:

- (1) the Appeals Referee believes that the requesting party's intent is to inconvenience the opposing party or delay the proceedings;
- (2) the party or witnesses request to appear by telephone, and are less than 40 miles away from an in-person hearing location; or
- (3) the request is made less than 24 hours before the hearing is scheduled to begin.

(g) If a party's request for a change to a telephone or in-person hearing is denied, the Appeals Referee shall state the grounds for denial on the record, include the written request in the official records, and state the reasons for the denial in the written decision.

(h) The Appeals Referee shall notify each party of the change prior to the hearing.

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

#### **04 NCAC 24C .0214 WITHDRAWAL OF APPEAL**

(a) The appealing party may request to withdraw an appeal. Any request to withdraw an appeal must be made to the Appeals Referee scheduled to conduct the hearing.

(b) A request to withdraw an appeal may be made in writing or orally.

- (1) If the request is made in writing, it shall be made part of the record and include:
  - (A) the Appeals Docket Number;
  - (B) the names of parties to the appeal;
  - (C) the name of the individual making the request, and the individual's job title if the employer is the requesting party; and
  - (D) a telephone number where the individual making the request to withdraw may be reached. The written request to withdraw shall be made part of the record.
- (2) If the request is made orally, it shall be recorded by the Appeals Referee using the digital recording system used to record hearings in accordance with G.S. 96-15(c).

(c) If a request to withdraw the appeal is granted, the Appeals Referee shall issue a written order. The order shall contain no right to appeal the withdrawal of the appeal.

(d) If the request to withdraw the appeal is denied, the Appeals Referee shall notify the requesting party and make an oral ruling on the record providing the information considered and the reason the request was denied. The order shall contain no right to appeal the denial of the withdrawal of the appeal.

(e) The Appeal Referee's order granting or denying the request shall be included in the official record of the case.

*History Note: Authority G.S. 96-4; 96-15;  
Eff. July 1, 2018;  
Amended Eff. June 1, 2022.*

#### **04 NCAC 24C .0215 NEW FILING AFTER WITHDRAWAL OF APPEAL**

A party who has withdrawn their appeal pursuant to 04 NCAC 24C .0214 may file a new appeal of the determination by the Adjudicator consistent with 04 NCAC 24C .0203. The refiled appeal shall be scheduled for hearing before an Appeals Referee consistent with G.S. 96-15(c). Either the DES or a party may raise the issue of timeliness if the refiled appeal is received after the appeal rights to the determination have expired. The issue of timeliness shall be determined in accordance with G.S. 96-15(b)(2).

*History Note: Authority G.S. 96-4; 96-15;  
Eff. July 1, 2018;  
Amended Eff. June 1, 2022.*

### **SECTION .0300 - LEGAL REPRESENTATION FOR INITIAL APPEALS**

#### **04 NCAC 24C .0301 ADMINISTRATIVE PROCEEDINGS**



- (a) An individual who is a party to a proceeding may represent himself or herself before an Appeals Referee.
- (b) A partnership may be represented by an employee or any of the partners.
- (c) A corporation may be represented by an officer, employee, or agent as defined in G.S. 32C-1-102.
- (d) An association may be represented by an employee or any of its members.
- (e) A limited liability company may be represented by an employee, agent, or any of its members.
- (f) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

*History Note:* Authority G.S. 96-4; 96-15; 96-17;  
Eff. July 1, 2015;  
Amended Eff. August 1, 2020.

**04 NCAC 24C .0302 NOTICES, SERVICE, AND LEGAL REPRESENTATION OR SUPERVISION BY NORTH CAROLINA ATTORNEY**

- (a) Notices or certification of legal representation by an attorney licensed to practice law in this State shall be in writing and presented to the Appeals Referee to become part of the official record.
- (b) Notices or certification of legal representation by an individual who is supervised by an attorney licensed to practice law in this State shall be in writing and presented to the Appeals Referee to become part of the official record, and shall contain:
  - (1) the name, business address, and telephone number of the supervising attorney;
  - (2) the supervising attorney's active North Carolina State Bar number; and
  - (3) the name, address, and telephone number of the person being supervised.
- (c) When a party has a legal representative, all documents or information required to be provided to the party shall only be provided to the legal representative, unless otherwise instructed on the record during the hearing.
- (d) An address provided to an Appeals Referee for mailing or electronic transmission of an Appeals Decision in a specific case shall not constitute a change of address with DES as set forth in 04 NCAC 24A .0102.
- (e) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

*History Note:* Authority G.S. 84-4; 84-7.1; 96-4; 96-15; 96-17;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

**04 NCAC 24C .0303 ADMISSION OF OUT-OF-STATE ATTORNEY TO APPEAR BEFORE APPEALS REFEREE**

- (a) Pursuant to G.S. 84-4.1, attorneys residing in and licensed to practice law in another state may seek to be admitted to practice before DES to represent a client.
- (b) An out-of-state attorney seeking to practice before DES, or the North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5), shall file a motion with the Chief Appeals Referee that complies with the requirements of G.S. 84-4.1.
- (c) A proposed Order Permitting Out-Of-State Attorney to Appear Pro Hac Vice, found on DES's website, shall be provided to the Chief Appeals Referee with the motion.
- (d) Following review of the motion, the Chief Appeals Referee shall issue an order granting or denying the motion.
- (e) Pro hac vice admission granted to practice before an Appeals Referee shall allow continued representation before the Board of Review and all administrative proceedings regarding the same matter. The Chief Appeals Referee has the discretionary authority to deny a motion for pro hac vice admission even if the motion complies with the requirements of G.S. 84-4.1.
- (f) Upon receipt of an order granting a motion for pro hac vice admission to practice before an Appeals Referee, the admitted out-of-state attorney or the associated North Carolina attorney shall pay the fees required by G.S. 84-4.1 to the North Carolina State Bar and General Court of Justice, and file a statement with the Chief Appeals Referee documenting payment of the fees and the submission of any pro hac vice admission registration statement required by the North Carolina State Bar. A copy of the motion, Order, registration statement, and documentation reflecting payment of the fees shall be provided to the Appeals Referee to be included in the official hearing record.

*History Note:* Authority G.S. 84-4.1; 96-4; 96-17;  
Eff. July 1, 2018.

## SECTION .0400 – SUBPOENAS FOR INITIAL APPEALS

### 04 NCAC 24C .0401 ISSUANCE OF SUBPOENAS

(a) Subpoenas to compel the attendance of witnesses and the production of records for any appeal hearing may be issued at the direction of the designated Appeals Referee.

- (1) A subpoena may be issued at the request of a party or on motion of the Appeals Referee.
- (2) Any documentation showing service of the subpoena shall become part of the official hearing record.

(b) Any party's request for a subpoena to be issued by the Appeals Referee shall be in writing, sent to the Appeals Referee, and shall include:

- (1) the name of the party requesting the subpoena;
- (2) the claimant's name, if applicable;
- (3) the employer's name, if applicable;
- (4) the docket or issue identification number of the case;
- (5) the name, address, and telephone number of each person sought for appearance at the hearing;
- (6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
- (7) the name and address of the individual or party in possession of any item sought; and
- (8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

(c) The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.

(d) Legal representatives may issue subpoenas at their own expense only if prior consent is obtained from the designated Appeals Referee.

(e) Subpoenas shall be issued at least five business days before the date of the scheduled hearing.

(f) Service of a subpoena shall be made by delivering a copy to the person, or by registered or certified mail, return receipt requested, unless a party or witness consents to service of the subpoena by other means, including electronic transmission.

(g) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.

- (1) The objection shall be directed to the Appeals Referee listed in the hearing notice prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.
- (2) The Appeals Referee shall rule on the objection and notify the parties before the hearing. The Appeals Referee's reasons for the ruling shall be in writing or stated on the record during the hearing.

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

### 04 NCAC 24C .0402 OBJECTION TO SUBPOENA

(a) Any party or person receiving a subpoena may serve a written objection to the issuance of a subpoena. The objection shall be addressed to the designated Appeals Referee, sent prior to the hearing, and contain the following:

- (1) the reasons for the objection; and
- (2) the relief sought by the objecting party.

(b) The Appeals Referee shall rule on the objection and notify the parties of the ruling before the hearing. The Appeals Referee's ruling shall be in writing or recorded as part of the official hearing record.

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

## SECTION .0500 – HIGHER AUTHORITY REVIEW OF APPEALS DECISION

**Codifier's Note:** Rules codified as 04 NCAC 24C .0501-.0506 were transferred to 04 NCAC 24F .0201-.0206 effective October 1, 2017.

**SECTION .0600 - POST-DECISION RELIEF**

**04 NCAC 24C .0601 POST-DECISION RELIEF**

*History Note:* Authority G.S. 96-4; 96-11.4; 96-15;  
Eff. July 1, 2015;  
Temporary Repeal Eff. March 1, 2016;  
Temporary Repeal Expired December 10, 2016;  
Repealed Eff. April 1, 2017.

**SUBCHAPTER 24D - TAX ADMINISTRATION**

**SECTION .0100 – REQUESTS FOR NONCHARGING OF BENEFIT PAYMENTS**

**04 NCAC 24D .0101 NOTICE OF CLAIM TO EMPLOYER**

Upon receipt of a claim for benefits filed by a claimant, DES shall notify the claimant's last employer and all base period employers of the claim filed.

*History Note:* Authority G.S. 96-4; 96-11.4; 96-15;  
Eff. July 1, 2015.

**04 NCAC 24D .0102 NOTICE TO EMPLOYER OF POTENTIAL CHARGES**

(a) DES shall notify each employer in writing of potential charges to the employer's account. The notice shall contain the:

- (1) date of the notice;
- (2) claimant's name and social security number;
- (3) date the claimant's benefit year began;
- (4) claimant's weekly benefit amount and weekly earnings allowance;
- (5) employer's reporting number used to report wages for the claimant;
- (6) base period wages reported by the employer by calendar quarter and dollar amount;
- (7) employer's percentage of total base period wages reported;
- (8) maximum potential charge amount that can be applied to the employer's experience rating account if the claimant exhausts his or her benefits;
- (9) a statement containing the employer's right to protest the notice; and
- (10) a statement containing the employer's right to notify the Division within 15 days of the mailing date of the notice if the claimant did not work for the employer or the wages are incorrect.

(b) DES shall provide notice of potential charges to the employer's account using the following forms, as applicable:

- (1) Notice of Claim and Potential Charges to Your Account;
- (2) Notice of Unemployment Claim, Wages Reported and Potential Charges;
- (3) Notice of Initial Claim and Potential Charges to Reimbursable Employer;
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary Layoff.

*History Note:* Authority G.S. 96-4; 96-11.1; 96-11.2; 96-11.3; 96-11.4; 96-15;  
Eff. July 1, 2015;  
Amended Eff. May 1, 2021; July 1, 2018.

**04 NCAC 24D .0103 REQUIREMENTS FOR REQUESTING NONCHARGING OF BENEFIT PAYMENTS**

**04 NCAC 24D .0104 TIME FOR FILING REQUESTS FOR NONCHARGING**

**04 NCAC 24D .0105 DETERMINATION ON REQUESTS FOR NONCHARGING**

**05 NCAC 24D .0106 APPEALING DENIAL OF REQUEST FOR NONCHARGING**

*History Note:* Authority G.S. 96-4; 96-11.1; 96-11.3, 96-11.4;

*Eff. July 1, 2015;*  
*Recodified from 04 NCAC 24D .0201-.0203 Eff March 1, 2017;*  
*Amended Eff. July 1, 2018; October 1, 2017;*  
*Repealed Eff. May 1, 2021.*

## **SECTION .0200 - ACCOUNT CHARGE PROTESTS**

### **04 NCAC 24D .0201 NOTICE OF EMPLOYER QUARTERLY CHARGES**

DES shall notify each employer in writing of the quarterly list of charges to the employer's Account using Form NC CLM 626-9 that shall contain the:

- (1) date of the notice;
- (2) charging quarter ending date;
- (3) employer's name and mailing address;
- (4) claimant's name and social security number;
- (5) date the claimant's benefit year began;
- (6) employer's reporting number used to report wages for the claimant;
- (7) benefit charges to the employer for each listed claimant; and
- (8) a statement containing the employer's right to protest the list of charges.

*History Note: Authority G.S. 96-4; 96-11.2; 96-11.3; 96-11.4; 96-11.5; 96-15;*  
*Eff. May 1, 2021.*

### **04 NCAC 24D .0202 REQUIREMENTS FOR FILING PROTESTS TO LIST OF CHARGES**

An employer who protests the benefit charges to its account shall make the protest in writing within 30 days of the mailing date of Form NC CLM 626-9 to DES's Claims Unit in accordance with 04 NCAC 24A .0104(s), and shall list all grounds for the protest as prescribed under Rule .0203 of this Section.

*History Note: Authority G.S. 96-4; 96-11.3; 96-11.4;*  
*Eff. July 1, 2015;*  
*Recodified from 04 NCAC 24D .0103 Eff. March 1, 2017;*  
*Amended Eff. May 1, 2021; October 1, 2017.*

### **04 NCAC 24D .0203 GROUNDS FOR PROTESTING LIST OF CHARGES**

An employer shall only file protests for:

- (1) the reasons set forth in G.S. 96-11.3;
- (2) clerical errors in the list of charges;
- (3) charges resulting from individuals who were never employed by the employer; or
- (4) the claimant has new separation from employment occurring between the date that the claimant's benefit year began and the last week ending date for which the claimant was paid benefits, and a base period employer did not have an opportunity to request noncharging on the subsequent separation.

*History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5;*  
*Eff. July 1, 2015;*  
*Recodified from 04 NCAC 24D .0105 Eff. March 1, 2017;*  
*Amended Eff. May 1, 2021; October 1, 2017.*

### **04 NCAC 24D .0204 DES'S RESPONSIBILITIES UPON RECEIPT OF PROTEST TO LIST OF CHARGES**

(a) DES shall review the employer's account charges and investigate the accuracy of the charges based on the reasons provided by the employer in the protest.

(b) Upon completion of its review, DES shall issue a written determination of its findings based on the reasons provided by the employer in the protest.

*History Note: Authority G.S. 96-4; 96-11.4;*  
*Eff. July 1, 2015;*

*Recodified from 04 NCAC 24D .0106 Eff. March 1, 2017.*

**04 NCAC 24D .0205 DETERMINATION ON GROUNDS CONTAINED IN PROTEST**

DES's determination on the employer's protest to the list of benefit charges to its account shall contain:

- (1) notice of whether the relief sought by the employer in the protest was granted or denied;
- (2) any adjustments that have been made to the list of charges if the relief sought in the protest was granted, or the reasons for denial if the relief sought in the protest was denied;
- (3) the date the determination was mailed or sent to the employer by electronic transmission;
- (4) the employer's right to appeal the determination consistent with 04 NCAC 24C .0203;
- (5) the time period within which an appeal shall be filed; and
- (6) instructions for filing an appeal with DES's Claims Unit pursuant to 04 NCAC 24A .0104(s).

*History Note: Authority G.S. 96-4; 96-11.3; 96-15;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .0107 Eff. March 1, 2017;  
Amended Eff. July 1, 2018; October 1, 2017.*

**SECTION .0300 - ADEQUACY**

**04 NCAC 24D .0301 ADEQUACY THRESHOLD**

(a) An employer who establishes a pattern of failing to provide a timely response or adequate response to the Request for Separation Information (Form NCUI 500AB) under 04 NCAC 24B .0107, shall not be relieved of charges for resulting erroneous unemployment insurance benefit payments.

(b) In determining the timeliness of an employer response, DES shall consider the following:

- (1) whether the response was received within 14 days pursuant to G.S. 96-15; and
- (2) whether the employer had good cause for failing to respond within the 14 day period.

(c) In determining the adequacy of an employer response, DES shall consider the following:

- (1) what information was requested;
- (2) whether the response to the request is sufficient to satisfy the request;
- (3) whether an employer should have provided DES with copies of relevant handbooks, policies, warnings, recordings, documents, or other information related to the claim; and
- (4) whether the employer's responses provide enough facts to enable an authorized DES representative to make a correct legal determination without having to contact the employer to obtain additional information.

(d) An employer who fails to submit timely or adequate responses to two or two-percent, whichever is greater, of the total requests for separation information (Form NCUI 500AB) under G.S. 96-11.4 during the reporting cycle, shall not be relieved of erroneous payments in the following charging cycle as defined under 04 NCAC 24A .0105.

(e) DES shall review each employer's account every reporting cycle to determine whether the employer has a pattern of failing to respond timely or adequately to requests for separation information under G.S. 96-11.4, and shall issue an Adequacy Threshold Determination at the conclusion of the reporting year cycle if the employer has met the criteria defined under Paragraph (d) of this Rule.

*History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15; 23 U.S.C. 3303;  
Eff. July 1, 2015.*

**04 NCAC 24D .0302 ADEQUACY THRESHOLD DETERMINATION**

(a) The Adequacy Threshold Determination shall include:

- (1) the effect of the determination on the employer's account;
- (2) the reasons for the determination;
- (3) the date the determination was mailed or sent by electronic transmission to the employer;
- (4) instructions for protesting the determination; and
- (5) the time period within which a protest shall be filed.

(b) An employer may protest its Adequacy Threshold Determination and shall file its written request with DES's Claims Unit pursuant to 04 NCAC 24A .0104(m).

- (1) The request shall include the following:
  - (A) the name of the employing unit;

- (B) the address of the employing unit;
  - (C) the account number of the employing unit;
  - (D) a statement of the question involved and reasons for the request; and
  - (E) the name, address, and official position of the individual making the request.
- (2) The written request shall be filed within 15 days after the date that the Adequacy Threshold Determination notice was sent to the employer, and the timeliness requirements of 04 NCAC 24A .0106 shall apply.

(c) Following receipt of the written request, the Claims Unit shall review the employer's request for review and issue a written determination. The determination shall notify the employing unit of whether its application was granted or denied, and explain the reasons for the ruling and what information was considered.

(d) No further right of appeal from an unfavorable written determination of a protest of an Adequacy Threshold Determination shall exist unless and until an Adequacy Penalty Determination, as defined under Rule .0303 of this Section is issued at the conclusion of each corresponding charging cycle.

*History Note: Authority G.S. 96-4; 96-11.3; 96-11.4; 96-15; 26 U.S.C. 3303;  
Eff. July 1, 2015;  
Amended Eff. October 1, 2017.*

#### **04 NCAC 24D .0303 ADEQUACY PENALTY DETERMINATION**

(a) DES shall issue a written Adequacy Penalty Determination at the end of each charging cycle to notify the employer of charges to its account for erroneous unemployment benefit payments identified during the charging cycle if the payments resulted from untimely or inadequate responses as set forth in 04 NCAC 24D .0301 to requests for information regarding a claimant's separation from employment or status, if the employer met or exceeded the adequacy threshold in the prior reporting cycle.

(b) The Adequacy Penalty Determination shall include the following:

- (1) a listing containing the specific claims that would have resulted in a relief from charges as a result of erroneous unemployment insurance payments that were later reversed on appeal;
- (2) instructions for protesting the Adequacy Penalty Determination; and
- (3) the date that the Adequacy Penalty Determination is mailed or sent to the employer by electronic transmission.

(c) An employer may protest its Adequacy Penalty Determination and shall file its written request with DES's Claims Unit pursuant to 04 NCAC 24A .0104(m).

- (1) The request shall include:
  - (A) the name of the employing unit;
  - (B) the address of the employing unit;
  - (C) the account number of the employing unit;
  - (D) a statement of the question involved and reasons for the request; and
  - (E) the name, address, and official position of the individual making the request.
- (2) The written request shall be filed within 15 days after the date that the Adequacy Penalty Determination was mailed or provided to the employer by electronic transmission, and the timeliness requirements of 04 NCAC 24A .0106 shall apply.
- (3) Following receipt of the written request, the Claims Unit shall review the employer's request and issue a written determination. The determination shall notify the employing unit of whether its application was granted or denied, explain the reasons for the ruling and identify the information considered, and contain instructions for appealing a denial to DES's Appeals Section pursuant to 04 NCAC 24A .0104(m).

*History Note: Authority G.S. 96-11.3; 96-11.4; 96-15; 26 U.S.C. 3303;  
Eff. July 1, 2015;  
Amended Eff. October 1, 2017.*

#### **04 NCAC 24D .0304 APPEALING ADEQUACY PENALTY DETERMINATIONS**

(a) An employer may file an appeal of its Adequacy Penalty Determination and request a hearing. The appeal shall be filed with DES's Claims Unit pursuant to 04 NCAC 24A .0104(m).

(b) The appeal shall be filed within 15 days after the date that the Adequacy Penalty Protest Determination was sent to the employer, and the timeliness requirements of 04 NCAC 24A .0106 shall apply.

(c) Appeal hearings from Adequacy Penalty Determinations shall be conducted as set forth in Section .0200 of Subchapter 24C.

*History Note:* Authority G.S. 96-11.3; 96-11.4; 96-15; 26 U.S.C. 3303;  
Eff. July 1, 2015;  
Amended Eff. October 1, 2017.

## **SECTION .0400 - VOLUNTARY ELECTION AND PAYMENTS**

### **04 NCAC 24D .0401 VOLUNTARY ELECTION BY EMPLOYERS**

- (a) Any employer electing coverage under G.S. 96-9.8 of the Employment Security Law shall make the election by completing the Employer Status Report (Form NCUI 604), available on DES's website.
- (b) The information provided in the Employer Status Report (Form NCUI 604) shall be provided in the same manner as required under Rule .0602 of this Subchapter.
- (c) Voluntary election shall not be granted if DES determines that potential benefit payments would exceed the taxes received from the employer.
- (d) Employers who satisfy the criteria for voluntary election of coverage pursuant to G.S. 96-9.8 shall have a contributory unemployment tax account, and shall not have a reimbursable account.

*History Note:* Authority G.S. 96-4; 96-9.8; 26 U.S.C. 3306;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

### **04 NCAC 24D .0402 ELECTION TO REIMBURSE IN LIEU OF CONTRIBUTIONS**

- (a) A new qualifying employer under G.S. 96-9.6 electing to pay reimbursements for benefits, rather than contributions, shall make the election by writing a letter stating their election to DES's Tax Administration Section as provided in 04 NCAC 24A .0104(x) within 30 days after the employer receives written notification from the Division that it is eligible to make an election as defined under G.S. 96-9.6.
- (b) A qualifying employer under G.S. 96-9.6 electing to pay reimbursements for benefits, rather than contributions, shall within 30 days before the January 1 effective date, make the election by sending a letter stating their election to DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(x).

*History Note:* Authority G.S. 96-4; 96-9.6; 96-9.8; 26 U.S.C. 3309;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

### **04 NCAC 24D .0403 PAYMENT OF EMPLOYER TAXES**

- (a) Taxes shall be due and payable to the Division of Employment Security and sent to DES's administrative office in Raleigh, North Carolina, or delivered to an agent of DES designated to accept payments as provided in 04 NCAC 24A .0104(y).
- (b) Timeliness of payments shall be determined pursuant to 04 NCAC 24A .0106.

*History Note:* Authority G.S. 96-4; 96-9.15;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

## **SECTION .0500 - RECORDS**

### **04 NCAC 24D .0501 RECORDS OF EMPLOYERS**

- (a) Each employer shall keep accurate employment and payroll records. These records shall be maintained for five years after the calendar year in which wages for services are paid and shall include the following:
- (1) the name and correct address of the employer;
  - (2) the name and address of each division, branch, or establishment operated, owned, or maintained by the employer at different locations in North Carolina; and
  - (3) the following information for each individual performing services for the employer:
    - (A) the individual's name;

- (B) the individual's address;
  - (C) the individual's social security number;
    - (i) if an individual performing services for an employer does not have a social security number, the employer shall request that the individual produce a receipt issued by the Social Security Administration, showing that the individual has filed an application for a social security number;
    - (ii) the employer shall copy and retain a copy of the receipt, and the individual must retain the receipt;
  - (D) the dates on which the individual performed services for the employer;
  - (E) the actual number of hours worked each day and total number of hours worked each week;
  - (F) daily attendance record, including times that the individual did not work for reasons other than lack of work;
  - (G) the state or states in which the individual performed services;
    - (i) the base of operations if any of the services are performed outside North Carolina, and are not incidental to the services performed in North Carolina; or
    - (ii) if there is no base of operations, then the place from which services are directed or controlled; and
    - (iii) the individual's state of residence;
  - (H) the amount of wages paid to the individual for each separate payroll period, if paid weekly, or if not paid weekly, by calendar weeks;
    - (i) date of payment of the wages; and
    - (ii) amounts or remuneration paid to each individual for each separate payroll period other than "wages," as defined in G.S. 96-1(b)(28);
  - (I) amounts paid to individuals as allowances or reimbursements for travel or other business expenses, dates of payments, and the amounts of expenditures actually incurred and documented by the individual;
  - (J) whether, during any payroll period the individual worked less than full time, and if so, the hours and dates worked;
  - (K) reasons for an individual's separation from work;
  - (L) any contract between the employer and the worker;
  - (M) where the employer considers the worker to be an independent contractor or otherwise not an "employee" under the Employment Security Law, all records, documentation and evidence which supports that classification; and
  - (N) federal and state tax returns for the periods when the worker was employed.
- (b) In addition to the records required in Paragraph (a) of this Rule, each employer shall keep the following:
- (1) the records that establish and reflect ownership and any changes of ownership of the employer;
  - (2) the address where the headquarters of the employer is located;
  - (3) the mailing address of the employer; and
  - (4) the address at which the records are available for inspection or audit by representatives of DES.
- (c) Each employer's records shall reflect:
- (1) the addresses of owners; or
  - (2) in the event the employer is a corporation or an unincorporated organization, the records shall show the addresses of directors, officers, and any individuals on whom subpoenas, legal processes, or citations may be served in North Carolina.

*History Note:* Authority G.S. 96-4; 96-9.15; 96-10; 26 U.S.C. 3306; Eff. July 1, 2015.

#### **04 NCAC 24D .0502 WAGE RECORDS**

- (a) Wages paid for services excluded from the definition of "employment" as defined in G.S. 96-1(b)(12) shall be separately reflected in the employer's records to indicate the following:
- (1) the time of service; and
  - (2) remuneration for services that is separate from taxable wages.



(b) Where there are pay periods in which an individual performs services excluded from the term "employment," and any service which is "employment," the employer's record shall reflect the hours spent in the excluded service and the hours spent in "employment."

(c) If any remuneration other than monetary wages is paid to or is received by an individual related to services performed by the individual, the records shall show the total amount of cash wages and the cash value of any other remuneration paid by the employer.

(d) If any part of an individual's wages is not paid in cash, the reasonable cash value of the remuneration other than cash shall be deemed for all relevant purposes as follows:

- (1) the amount that is agreed upon between the employer and the individual if:
  - (A) the terms of the agreement are reported to DES; and
  - (B) DES determines that the agreed value or amount is reasonable pursuant to IRS Publication 15-B; or
- (2) the amount DES determines if:
  - (A) the amount agreed upon is unreasonable; or
  - (B) the employer and the individual fail to agree upon an amount; or
  - (C) the employer fails to report the terms of an agreement to DES; and
  - (D) the employer fails to show the cash value of the noncash remuneration prior to the due date of contributions with respect to the wages.
- (3) DES shall determine an amount by reviewing documents, tax values, internet sites and other available information that reflects the market value.

(e) This Rule incorporates material found in the IRS Publication 15-B 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 IRS Publication 15-B are located at 700 Wade Avenue, in Raleigh, North Carolina and may be obtained at no cost to the public by request by contacting DES as specified under 04 NCAC 24A .0201.

*History Note:* Authority G.S. 96-1(b)(28); 96-4; 26 U.S.C. 3306; IRS Pub. 15-B;  
Eff. July 1, 2015.

#### **04 NCAC 24D .0503 ALLOWANCES AND REIMBURSEMENT ADVANCES**

(a) Allowances, advances of reimbursements paid to an individual in employment for traveling, and other bona fide expenses incurred or reasonably expected to be incurred in the business of the individual's employer shall not be treated as wages, provided:

- (1) a separate payment is made for the expenses; or
- (2) itemized accounting records are kept indicating the separate amounts where a single payment covers both wages and expenses combined; and
- (3) the amount of payments for expenses excluded from wages shall not exceed the amounts allowable as deductible expenses by income tax regulations under the United States Internal Revenue Code, 26 U.S.C. 62(2) and 26 U.S.C. 162(a)(2). Where the United States Internal Revenue Service (IRS) has not made a determination, DES shall make an independent determination.

(b) Where an employee must pay traveling and other expenses out of commissions or salary and these amounts are not accounted for separately, the entire amount of commissions or salary shall be considered wages, unless the employer submits itemized records which show that a certain percentage of commissions or salary is expenses.

- (1) The money value for room and board shall not be included in wages if the room and board is provided to the employee for the convenience of the employer.
  - (A) If the room and board has been excluded from wages by the IRS for income tax withholdings, FICA and FUTA, it shall be considered to be for the convenience of the employer and excluded from wages.

(c) This rule incorporates 26 U.S.C. 62(2) "Adjusted Gross Income Defined" and 26 U.S.C. 162(a)(2) "Traveling Expenses" 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 26 U.S.C. 62(2) and 26 U.S.C. 162(a)(2) 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; 150B-21.6; 26 U.S.C. 62(2); U.S.C. 162(a)(2).  
Eff. July 1, 2015.

**04 NCAC 24D .0504 MANNER OF RECORDKEEPING**

- (a) Each employer shall maintain records as prescribed in this Section.
- (b) All records shall be kept and maintained in a manner that preserves the integrity of all reports that the employing unit is required to file with DES.
  - (1) Records shall be accessible to authorized representatives of DES within the geographical boundaries of the State of North Carolina.
  - (2) When records are not maintained, or are not available within North Carolina, the employing unit shall pay to DES the expenses and costs incurred when a representative of DES is required to travel outside the State of North Carolina to inspect or audit the employing unit's records or provide for delivery of the required records for inspection or audit to DES via mail or electronic transmission.
  - (3) Where records are delivered via electronic transmission, the employer shall provide DES with all necessary information to access the content of the electronic transmission.
- (c) Where any part of an employing unit's accounting records are maintained by an automated data processing system, the employing unit shall provide the following:
  - (1) audit trails with all supporting documentation;
  - (2) general accounting books with any ledgers containing source references that coincide with financial reports for reporting periods; and
  - (3) a description of the automatic data processing portion of the employing unit's accounting system.
- (d) Each employing unit, when requested by DES, shall furnish a job description of duties performed by any individual or group of individuals who are performing or have performed services for the employing unit.
- (e) Records prescribed by this Subchapter shall be preserved for five years after the calendar year in which wages for services are paid.

*History Note:* Authority G.S. 96-4; 96-10; 26 U.S.C. 3306;  
Eff. July 1, 2015.

**SECTION .0600 - REPORTS**

**04 NCAC 24D .0601 GENERAL FORMAT OF REPORTS AND FORMS AND METHODS OF SUBMISSION**

- (a) The following shall file the Employer's Quarterly Tax and Wage Report (NCUI 101) using compact disks, or electronic transmission via the internet at des.nc.gov, or paper returns.
  - (1) employers with 10 or more employees in any one calendar quarter; and
  - (2) other entities, including agents reporting on behalf of employers, who file reports for a client employer with a total of 10 or more employees in any one calendar quarter.
- (b) The Employer's Quarterly Tax and Wage Reports shall contain the:
  - (1) quarter for which the wages are being reported;
  - (2) employer's account number;
  - (3) tax rate assigned by DES;
  - (4) date that the NCUI 101 was due to DES;
  - (5) total amount of taxable wages paid to employees in accordance with G.S. 96-9.3;
  - (6) total amount of wages that exceed the taxable wages;
  - (7) total amount of tax due for the quarter;
  - (8) total amount of interest due for the quarter;
  - (9) amount of late filing penalty in accordance with G.S. 96-10, if applicable;
  - (10) amount of late payment penalty in accordance with G.S. 96-10, if applicable;
  - (11) name, social security number, and gross wages of each employee;
  - (12) name, title, telephone number, and signature of the individual submitting the NCUI 101 on behalf of the employer; and
  - (13) date that form is submitted to DES.
- (c) Employers, including agents, who file an Employer's Quarterly Tax and Wage Report for a client employer with less than 10 total employees in any one calendar quarter shall use compact disks, electronic transmissions via DES's website, or paper returns.

(d) Agents reporting on behalf of employers with less than 10 employees may submit compact disks, electronic transmissions via DES's website, or paper returns that contain information from multiple employers.

*History Note: Authority G.S. 96-4; 96-9.15;  
Eff. July 1, 2015;  
Amended Eff. August 1, 2020.*

#### **04 NCAC 24D .0602 STATUS REPORTS**

(a) Each employing unit shall complete and file an Employer Status Report (Form NCUI 604) with DES within 10 days of becoming subject to the Employment Security Law. The Employer Status Report is located on DES's website, and shall include the following:

- (1) the employing unit's federal identification number, if any;
- (2) the employing unit's North Carolina Department of Revenue's withholding identification number, if any;
- (3) all previously assigned unemployment insurance tax identification or account numbers;
- (4) the employing unit's legal name;
- (5) the employing unit's trade name;
- (6) the employing unit's mailing address, telephone, and fax numbers;
- (7) the physical address and county for each of the employing unit's North Carolina locations;
- (8) if the employing unit has no locations in this State, the primary employee's home address;
- (9) the principal activity or service performed by the employing unit in North Carolina;
- (10) the name and address of each of the employing unit's owners;
- (11) the name, telephone number, and email address of an individual authorized to act on behalf of the employing unit;
- (12) the type of business ownership;
- (13) the number of employees expected within 12 months of the date that Form NCUI 604 is submitted to DES;
- (14) the date the employing unit first hired one or more workers in North Carolina;
- (15) whether the employing unit in this State is part of a larger organization and is primarily engaged in providing support services to that organization;
- (16) whether the employing unit is an employment service company as defined in G.S. 96-1(14);
- (17) for general employers:
  - (A) whether the employing unit has or expects to have a quarterly payroll of one thousand five hundred dollars (\$1,500) or more and if so, the date that this occurred or is expected to occur; and
  - (B) whether the employing unit has or expects to employ at least one worker in 20 different calendar weeks during a calendar year and if so, the date that this occurred or is expected to occur;
- (18) for agricultural employers:
  - (A) whether the employing unit has or expects to have a quarterly payroll of twenty thousand dollars (\$20,000) or more, and if so, the date that this occurred or is expected to occur; and
  - (B) whether the employing unit has or will employ 10 or more workers in 20 different weeks during a calendar year, and if so, the date that this occurred or is expected to occur;
- (19) for domestic employers, whether the employing unit has or will pay one thousand dollars (\$1,000) or more in a calendar quarter for domestic services in a private home, college club, fraternity, or sorority, and if so, the date that this occurred or is expected to occur;
- (20) for non-profit organizations, whether the employing unit has or will employ 4 or more workers in 20 different weeks during a calendar year, and if so, the date that this occurred or is expected to occur;
- (21) for employing units of government, whether the entity is local, state, or federal;
- (22) whether the employing unit wants to voluntarily cover its workers for unemployment insurance even if it is not subject to the Employment Security Law;
- (23) whether the employing unit has ever paid taxes pursuant to the Federal Unemployment Tax Act, and if so for which years the taxes were paid;

- (24) whether the employing unit has acquired, transferred assets, or merged with another business, or made any other change in the ownership of the business, and if so:
    - (A) the former entity's legal name;
    - (B) the former entity's trade name;
    - (C) the former entity's address;
    - (D) the former entity's North Carolina Unemployment Insurance Tax Identification number;
    - (E) the date on which the employing unit acquired the former entity, or changed its business;
    - (F) whether the employing unit acquired all or a portion of the former entity, and if a portion, the percent acquired;
    - (G) whether the former entity was operating when it was acquired by the employing unit, and if not, the date that the former entity closed;
    - (H) whether the former entity was in bankruptcy when it was acquired by the employing unit; and
    - (I) whether the former entity continues to have employees in North Carolina.
  - (25) whether there are workers who perform services for the employing unit, and who the employing unit considers to be self-employed or independent contractors;
  - (26) the name, signature, and official position of the individual filing the Form NCUI 604 on behalf of the employing unit; and
  - (27) the date that the individual completed Form NCUI 604 and submitted it to DES.
- (b) An employing unit that ceases business, continues operations without employees, transfers, leases, or sells all or any part of the assets of its business, or changes the business name, business entity, business location, telephone number, or mailing address of the business shall give notice to DES within 10 days by completing and filing a Change in Status Report (Form NCUI 101A), which is available on DES's website. Form NCUI 101A shall state:
- (1) the employing unit's name;
  - (2) the employing unit's mailing address;
  - (3) the employing unit's trade name;
  - (4) the employing unit's North Carolina Unemployment Insurance Tax Identification number;
  - (5) whether the employing unit sold or otherwise transferred part or all of the business, and if so:
    - (A) the name, mailing address, and telephone number of the entity to which the business was sold or otherwise transferred;
    - (B) the trade name of the entity to which the business was sold or otherwise transferred;
    - (C) whether the entire business operations, including equipment, merchandise, raw materials, and employees were sold, transferred, or leased to a new owner, and if so, the date of the sale, transfer or lease;
  - (6) whether a partnership was formed or changed, including the effective date of the formation or change, and an explanation of what occurred;
  - (7) whether the business was incorporated, including the effective date of incorporation;
  - (8) whether the business ceased all operations in North Carolina, including the date that all operations ceased;
  - (9) whether the business is operating without employees, including the last date on which the business had any employees;
  - (10) whether the business name changed, and if so, the new name of the business and a copy of the corporate minutes or amended charter on file with the North Carolina Department of the Secretary of State;
  - (11) whether there was a change in the address or telephone number, and if so, the changes to the address or telephone number;
  - (12) whether there was a change in the employing unit's contact for tax matters, and if so, the new agent's name, address, and telephone number, if applicable; and
  - (13) the name and signature of the individual submitting the Change in Status Report to DES on behalf of the employing unit.
- (c) An employing unit that acquires all or any part of the assets of another business shall complete and file an Employer Status Report (Form NCUI 604) within 10 days of the acquisition.

*History Note: Authority G.S. 96-4; 96-10; 96-11.7;  
 Eff. July 1, 2015;  
 Amended Eff. July 1, 2018.*

#### **04 NCAC 24D .0603 QUARTERLY REPORTS FROM TAXED EMPLOYERS**

(a) Each employer, other than a domestic employer who has elected to report and pay annually under G.S. 96-9.15(f), shall file with DES, within the month during which contributions for any period become due, an Employer's Quarterly Tax and Wage Report (Form NCUI 101) for the preceding calendar quarter that shall indicate the following:

- (1) the total amount of remuneration paid for employment, or proof that no remuneration was paid during the quarter;
- (2) the total amount of wages paid for employment;
- (3) the amount of wages paid to each individual employee; and
- (4) the name and social security number of each individual to whom the wages were paid and the federal identification number, if one exists.

*History Note:* Authority G.S. 96-4; 96-9.6; 96-9.15; 96-10;  
Eff. July 1, 2015.

#### **04 NCAC 24D .0604 ANNUAL REPORTS FROM DOMESTIC EMPLOYERS**

(a) A request by a domestic employer to report wages paid, and pay contributions on an annual basis shall be made in writing and delivered to DES pursuant to 04 NCAC 24A .0104. There is no special form or format required for the written request.

(b) Each qualified domestic employer who has made an election as referenced in Paragraph (a) of this Rule shall file with DES, a domestic Employer's Annual Tax and Wage Report (Form NCUI 101-C), that shall include all information specified under Rule .0603 of this Section and subtotaled for each quarter during the calendar year in which wages were paid.

*History Note:* Authority G.S. 96-4; 96-9.15; 96-10;  
Eff. July 1, 2015.

### **SECTION .0700 - TRANSFER OF EXPERIENCE RATING TO RELATED ENTITY SUCCESSOR ACCOUNT**

#### **04 NCAC 24D .0701 TRANSFER OF EXPERIENCE**

*History Note:* Authority G.S. 96-4; 96-10; 96-11.7;  
Eff. July 1, 2015;  
Repealed Eff. July 1, 2018.

#### **04 NCAC 24D .0702 REQUIREMENTS FOR TRANSFER OF EXPERIENCE**

(a) A successor employer shall use the following information when requesting a partial transfer of experience rating:

- (1) the total three-year taxable payroll ending June 30th prior to the last computation date for the transferring employer; and
- (2) the total three-year taxable payroll ending June 30th prior to the last computation date for the transferring employer, relating to the severable portion acquired.

(b) Notwithstanding Paragraph (a) of this Rule, an alternate three-year payroll may be used when the severed or retained unit was not operated by the transferring employer during the three-year period ending June 30th prior to the last computation date.

(c) A successor employer that acquires the experience rating account, either total or partial, shall be liable for accrued benefits and acquire related rights based on the transferring employer's employment prior to the acquisition. Benefit charges to the transferring or successor employer shall be made in accordance with the percentage used to transfer the experience rating account, based on wages paid prior to the transfer.

(d) The requirements of this Section shall apply to transfers mandated by law, and those requiring DES's approval pursuant to G.S. 96-11.7.

(e) DES shall issue a written determination of whether there was a partial or total transfer of an experience rating account when a request for a transfer of experience rating account is made by a successor employer.

(f) A successor employer's completion and submission of an Application for Partial Transfer of Experience Rating Account (Form NCUI 603) for a transfer pursuant to G.S. 96-11.7(b) within two years of the date that part of the organization, trade, or business was transferred, with the information described in Paragraph (a) of this Rule and by any means set forth in 04 NCAC 24A .0104(o) shall satisfy the requirements of this Rule.

(g) The successor employer's completion and submission of Form NCUI 603 for a transfer pursuant to G.S. 96-11.7(c) within 30 days of the mailing date of the written determination that part of the organization, trade, or business was transferred, with the information described in Paragraph (a) of this Rule, and by any means set forth in 04 NCAC 24A .0104(o) shall satisfy the requirements of this Rule.

(h) Form NCUI 603 shall contain:

- (1) the date that part of the organization, trade, or business was transferred;
- (2) the percent of the payroll transferred to the successor;
- (3) the percent of the payroll retained by the predecessor;
- (4) whether the successor employer is related to the predecessor employer;
- (5) the predecessor employer's name and account or federal ID number;
- (6) the name, title, and signature of individual signing the form on behalf of the predecessor employer;
- (7) the date that individual signed the form on behalf of the predecessor employer;
- (8) the successor employer's name and account number;
- (9) the name, title, and signature of individual signing the form on behalf of the successor employer; and
- (10) the date that individual signed the form on behalf of the successor employer.

(i) A successor employer that disagrees with a determination that there was a partial or total transfer of an experience rating account, or with the tax rate set forth in the determination, may file a written protest of the determination and request a hearing.

- (1) The protest shall be filed with DES's Tax Administration Section within 30 days from the date that the determination is mailed pursuant to 04 NCAC 24A .0104(o), as for protests of a Tax Rate Assignment.
- (2) Hearings requested pursuant to this Section shall be conducted as set forth in 04 NCAC 24F .0303.

*History Note: Authority G.S. 96-4; 96-10; 96-11.7;  
Eff. July 1, 2015;  
Amended Eff. August 1, 2020.*

#### **04 NCAC 24D .0703 LATE NOTICE OF TRANSFER**

(a) The following definitions shall apply in this Rule:

- (1) A related transfer is an acquisition by related party as defined in G.S. 96-11.7(c).
- (2) An "unrelated transfer" is any business transfer recognized in G.S. 96-11.7 except that of G.S. 96-11.7(c).

(b) A successor employer shall notify DES of an unrelated transfer within two years of the date that part of the organization, trade, or business was transferred in accordance with G.S. 96-11.7(b) and 04 NCAC 24D .0702. If a successor employer does not notify DES within two years of the date that part of the organization, trade, or business was transferred, and later requests a redetermination of its tax rate, DES shall not approve the transfer, and shall notify the employer in writing.

(c) A successor employer shall notify DES of a related transfer within 10 days of the date that part of the organization, trade, or business was transferred in accordance with G.S. 96-11.7(c) and pursuant to 04 NCAC 24D .0702. If a successor employer does not notify DES of a related transfer within 10 days of the date that part of the organization, trade, or business was transferred, and later requests a redetermination of its tax rate, DES shall recalculate the tax rate back to the date of acquisition, or January 1 of the year in which it received notice of the transfer, whichever is later.

*History Note: Authority G.S. 96-4; 96-11.7;  
Eff. August 1, 2020.*

### **SECTION .0800 - AGREEMENTS TO COMPROMISE**

#### **04 NCAC 24D .0801 APPLICATION FOR COMPROMISE**

- (a) An employing unit may file a request for compromise of its tax debt with DES.
- (b) A request for compromise shall include the following:
  - (1) the name and address of the employing unit;
  - (2) the date the request to compromise is made;
  - (3) the date the requested compromise is requested to be effective;
  - (4) stated reasons for the request to compromise;
  - (5) evidence to support the claim or reasons for the request;
  - (6) the amount and terms offered by the employer to settle the debt; and
  - (7) the signature of a duly authorized representative of the employer.
- (c) The employer shall provide all information requested by the Department pursuant to Section .0500 of this Subchapter for the determination of the compromise.
- (d) The request for compromise shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(w).

*History Note:* Authority G.S. 96-4; 96-10; 96-10.1;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

## **SECTION .0900 - SPECIAL TAX INVESTIGATIONS**

### **04 NCAC 24D .0901 SPECIAL TAX INVESTIGATIONS**

- (a) When it is discovered by a representative of DES that a claimant is alleging that he or she was an employee and the employer is alleging that the claimant was not an employee, the matter shall be referred to DES's Assistant Secretary in writing.
- (b) The Assistant Secretary, on behalf of DES, shall refer the matter to the Tax Administration Section for an investigation. Upon receipt of the findings of the investigation, the Assistant Secretary shall issue a Result of Investigation by the Tax Administration Section. The Result of Investigation shall be in writing and mailed to each party to the controversy pursuant to 04 NCAC 24A .0103.
- (c) The Result of Investigation shall provide notice of each party's rights for filing an appeal to obtain a hearing before the Board of Review, and the 10-day time period from the date of mailing within which an appeal shall be filed pursuant to 04 NCAC 24A .0104(bb) and G.S. 96-15(c).
- (d) Appeal hearings pursuant to this Section shall be upon order of the Board of Review and conducted pursuant to 04 NCAC 24F .0303.

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Amended Eff. August 1, 2020; July 1, 2018.

## **SECTION .1000 - REQUESTS AND HEARINGS TO REVIEW AND REDETERMINE TAX RATE**

### **04 NCAC 24D .1001 REQUEST FOR REDETERMINATION OF TAX RATE**

- (a) An employer may request a review and redetermination of its tax rate after receiving notice of the tax rate.
- (b) An employer requesting a review and redetermination of its tax rate shall file its written request with DES's Tax Administration Section as set forth in 04 NCAC 24A .0104(o).
- (c) The request for a review and redetermination shall be filed prior to May 1 following the effective date of the contribution rate pursuant to G.S. 96-9.2(d).

*History Note:* Authority G.S. 96-4; 96-9.2;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.

### **04 NCAC 24D .1002 DIVISION'S OBLIGATIONS**

- (a) DES shall review the employing unit's request to review and redetermine its tax rate and all available facts, and shall issue a written ruling. The ruling shall be mailed to the employing unit's address as set forth in 04 NCAC 24A .0103 and include the following:
  - (1) whether the application was granted or denied;

- (2) the applicable legal authority, with specific citations, for the ruling;
  - (3) the mailing date of the notice;
  - (4) a statement containing the employer's right to appeal the notice; and
  - (5) the time period within which an appeal may be filed.
- (b) The employing unit may file a written appeal of the ruling and request a hearing.
- (1) The appeal shall be filed with DES's Tax Administration Section within 30 days of the mailing date of the redetermination ruling pursuant to 04 NCAC 24A .0104(o).
  - (2) Hearings requested pursuant to this Section shall be conducted as set forth in 04 NCAC 24F .0303.

*History Note:* Authority G.S. 96-4; 96-9.2;  
 Eff. July 1, 2015;  
 Amended Eff. August 1, 2020; July 1, 2018.

**04 NCAC 24D .1003 CONTINUED PAYMENTS REQUIRED**

The employer shall continue to pay contributions at the rate assigned pending any hearing on an application for review and redetermination of tax rate until finally adjudicated. If the rate assigned is subsequently changed by a ruling of the Board of Review or the courts, the employer shall be entitled to a refund, or be liable for additional contributions.

*History Note:* Authority G.S. 96-4; 96-9.2; 96-10;  
 Eff. July 1, 2015.

**SECTION .1100 - TAX LIABILITY HEARINGS**

**Codifier's Note:** Rules codified as 04 NCAC 24D .1101-.1104 were transferred to 04 NCAC 24F .0301-.0304. Rules codified in 04 NCAC 24D .1105-.1107 were transferred to 04 NCAC 24F .0306-.0308 effective October 1, 2017.

**SECTION .1100 –TREASURY OFFSET PROGRAM AND EMPLOYER SETOFF DEBT COLLECTION**

**04 NCAC 24D .1101 NOTICE TO EMPLOYER OF REFERRAL TO TOP**

- (a) Consistent with 31 U.S.C. 3716, DES shall notify the employer 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 employer's name;
  - (2) the type of debt;
  - (3) the total amount of the referred debt;
  - (4) the total amount of the employer'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 employer may request a copy of DES's records that support the debt;
  - (10) a statement of the employer'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(k);
  - (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 employer'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 employer to seek information regarding the notice; and
  - (18) the date that the notice was mailed to the employer.
- (c) Employers choosing to repay the debt after receiving notice shall make payment to DES in accordance with 04 NCAC 24A .0104(y).



*History Note:* Authority G.S. 96-4; 96-9.15; 96-18; 31 CFR 285; 31 U.S.C. 3716;  
Eff. July 1, 2018.

**04 NCAC 24D .1102 EMPLOYER REEVALUATION OF DEBT**

(a) An employer requesting a reevaluation of its debt shall submit a written request to DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(k).

- (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 employer 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 employer.

(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 employer 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, 2018.

**04 NCAC 24D .1103 SETOFF DEBT COLLECTION ACT NOTICE TO EMPLOYER**

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

(b) The notice shall include:

- (1) the employer's name;
- (2) the type of debt;
- (3) the amount of the refund received by DES;
- (4) the total amount of the employer'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 employer'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(i);
- (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 employer's right 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 employer; and
- (17) a telephone number for the employer to seek information regarding the notice.

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

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

**04 NCAC 24D .1104 EMPLOYER SETOFF DEBT COLLECTION ACT HEARINGS**

(a) An employer debtor may file an appeal from a notice to claim its State income tax refund pursuant to a North Carolina Department of Revenue Offset Letter in accordance with 04 NCAC 24A .0104(i).

(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 24F .0303.

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

## **SECTION .1200 - SEASONAL PURSUITS**

### **04 NCAC 24D .1201 REQUEST FOR SEASONAL DETERMINATION**

- (a) Each employer desiring a seasonal determination shall request an Application for Seasonal Determination (Form NCUI 611) from DES's Tax Administration Section by telephone, mail, facsimile, or email as provided in 04 NCAC 24A .0104(t).
- (b) Each employer shall complete and submit the Application for Seasonal Determination (Form NCUI 611) to the Tax Administration Section as provided in 04 NCAC 24A .0104(t).
- (c) A request submitted on Form NCUI 611 shall contain the following:
- (1) the employing unit's name and physical address;
  - (2) years of operation in North Carolina;
  - (3) location of each seasonal pursuit;
  - (4) description of each seasonal pursuit;
  - (5) an explanation of why the seasonal pursuit being requested cannot be conducted throughout the year;
  - (6) beginning and ending dates of each seasonal pursuit for the last four years;
  - (7) the name of the individual requesting the determination;
  - (8) the official position of the individual requesting the determination on behalf of the employing unit; and
  - (9) a telephone number.
- (d) The completed Application for Seasonal Determination shall be filed at least 20 days before the beginning date of the period of production operations for which the determination is requested.

*History Note: Authority G.S. 96-4; 96-16;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.*

### **04 NCAC 24D .1202 WRITTEN DETERMINATION**

- (a) DES shall issue a written determination granting or denying the request upon making its determination pursuant to G.S. 96-16(c). The determination shall notify the employer of the following:
- (1) the specific seasonal period assigned by DES;
  - (2) the effective date of the determination; and
  - (3) the specific filing requirements for seasonal employers.
- (b) A determination that denies the request for a seasonal designation shall state the reasons for the denial.
- (c) The determination shall contain notice of each party's right to appeal the determination and request a hearing, the date the determination was mailed, and the time period within which an appeal shall be filed.
- (d) The employer may file its appeal of a denial of a request for seasonal pursuit designation with DES's Tax Administration Section as prescribed in 04 NCAC 24A .0104(t).
- (e) Hearings shall be conducted as set forth in 04 NCAC 24F .0303.

*History Note: Authority G.S. 96-4; 96-16;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.*

### **04 NCAC 24D .1203 DISPLAY REQUIRED**

- (a) Each employer shall display no less than two Notice to Workers of a Seasonal Determination forms in separate locations (Form NCUI 543) on its premises. Form NCUI 543 shall be sent to employers when approved for Seasonal Pursuit status by mail and shall contain:
- (1) notice that a seasonal determination was requested by the employer and issued by DES; and
  - (2) instructions for workers employed by the employer to protest the determination within 10 days.
- (b) The Notice to Workers of a Seasonal Determination (Form NCUI 543) shall be provided by DES and shall be displayed on the employer's premises in such places as:

- (1) entry ways used by workers to enter and exit the employer's premises;
- (2) in or near an area where a record of time worked is required to be used or frequented by workers;
- (3) a bulletin board in places where workers gather; or
- (4) other locations within the place of employment visible to employees.

*History Note:* Authority G.S. 96-4; 96-16;  
Eff. July 1, 2015.

#### **04 NCAC 24D .1204 WAGE RECORDS AND REPORTS REQUIREMENT**

- (a) Any pursuit that DES determines to be seasonal shall maintain payroll records such that the seasonal wages paid to workers during the active periods of the seasonal pursuit may be distinguished from any non-seasonal wages that are paid to those workers.
- (b) Any employer engaged in a seasonal pursuit shall submit quarterly wage reports pursuant to Rule .0603 of this Subchapter, showing the seasonal wages paid to workers during the active periods assigned by DES.
- (c) Within 15 days of the date that DES mails notice of a seasonal period, the employer shall complete and submit to DES a Breakdown of Wages Previously Reported for Workers to Show Seasonal and Non-Seasonal Wages (Form NCUI 542) with seasonal wages in the current base period and in intervening quarters between the base period and completed calendar quarters preceding the first day of the active period, which shall include the following:
  - (1) each worker's social security number, and name; and
  - (2) each worker's seasonal wages, non-seasonal wages and total wages for each calendar quarter.
- (d) Any wages earned by seasonal workers outside the seasonal period assigned by DES shall be reported as non-seasonal wages, even though they may have been earned for seasonal work.

*History Note:* Authority G.S. 96-4; 96-16;  
Eff. July 1, 2015.

#### **SECTION .1300 – COLLECTION METHODS OF EMPLOYER DEBT**

##### **04 NCAC 24D .1301 NOTICE TO EMPLOYER**

- (a) DES shall serve notice and execution of levy on employer to collect past due unemployment insurance taxes, penalties, interest, and costs.
- (b) Notice shall be written and provided to the employer by U.S. mail.
- (c) The notice shall state the following:
  - (1) that DES is in possession of judgments and executions that were properly docketed and indexed by the clerks of the superior court;
  - (2) the county of the superior court where the judgments and executions are docketed;
  - (3) that DES mailed previous notice of the debt and the date DES mailed notice to the employer;
  - (4) the amount owed by the employer;
  - (5) the name of any other individual or entity that will receive notice of the debt;
  - (6) the statutory authority for service of execution of levy by DES;
  - (7) the relief sought by DES; and
  - (8) the name, address and telephone number of an authorized representative of DES who may be contacted regarding the debt.

*History Note:* Authority G.S. 1-359; 96-4; 96-10; 96-18;  
Eff. July 1, 2015.

##### **04 NCAC 24D .1302 NOTICE TO GARNISHEE**

- (a) DES shall serve notice and execution of levy on third parties in order to collect past due unemployment insurance taxes, penalties, interest, and costs.
- (b) Notice shall be written and provided to the garnishee by U.S. mail.
- (c) The notice shall state the following:
  - (1) the name of the indebted employer;
  - (2) that DES is in possession of judgments and executions that were properly docketed and indexed by the clerks of the superior court;
  - (3) the county of the superior court where the judgments and executions are docketed;

- (4) that the employer has received previous notice of the debt;
- (5) the amount owed by the employer;
- (6) statutory authority for service of execution of levy;
- (7) relief sought and how to remit payment; and
- (8) the name, address and telephone number of an authorized representative of DES who may be contacted regarding the debt.

*History Note:* Authority G.S. 1-359; 96-4; 96-10;  
Eff. July 1, 2015.

## SECTION .1400 - RECORDS

**04 NCAC 24D .1401 OFFICIAL FORMS (RECODIFIED TO 04 NCAC 24A .0601 EFF. AUGUST 1, 2020)**

### SUBCHAPTER 24E - UNEMPLOYMENT INSURANCE DOCUMENTS AND RECORDS

**04 NCAC 24E .0101 CONFIDENTIALITY OF UNEMPLOYMENT INSURANCE INFORMATION**  
**04 NCAC 24E .0102 REQUEST FOR DOCUMENTS AND RECORDS**  
**04 NCAC 24E .0103 FEES FOR COPIES AND SERVICES**  
**04 NCAC 24E .0104 PAYMENT OF FEES**

*History Note:* Authority G.S. 96-4(d); 96-4(x); 20 CFR 603;  
Eff. May 1, 2013;  
Repealed Eff. July 1, 2015.

### SUBCHAPTER 24F – BOARD OF REVIEW

#### SECTION .0100 – GENERAL

**04 NCAC 24F .0101 OFFICE LOCATION FOR BOARD OF REVIEW**

The administrative office of the North Carolina Department of Commerce, Board of Review is located at 700 Wade Avenue, in Raleigh, North Carolina. The mailing address is Post Office Box 28263, Raleigh, NC 27611. The office is open to the public during business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for State holidays as set forth in 25 NCAC 01E .0901, including subsequent amendments and editions.

*History Note:* Authority G.S. 96-4; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0102 ADDRESSES FOR NOTICE AND ELECTRONIC NOTICE**

Rule 04 NCAC 24A .0103 shall apply for notice sent by the Board of Review.

*History Note:* Authority G.S. 96-4; 96-15; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0103 ADDRESSES FOR FILING APPEALS, EXCEPTIONS, OR REQUESTS**

Appeals, exceptions, and requests shall be filed with the Board of Review in accordance with 04 NCAC 24A .0104(l), (r), and (v).

*History Note:* Authority G.S. 96-4; 96-15; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0104 FILING/MAILING DATES AND USE OF FORMS**

Rule 04 NCAC 24A .0106 shall apply in determining the timeliness of appeals, exceptions, and requests filed with the Board of Review.

*History Note:* Authority G.S. 96-4; 96-15; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0105 SIGNATURES**

- (a) Rule 04 NCAC 24A .0107 shall apply in authenticating a digital signature.
- (b) Rule 04 NCAC 24A .0108 shall apply in determining signatures on reports and forms.

*History Note:* Authority G.S. 96-4; 96-9.15; 96-15; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0106 APPEAL DATE**

- (a) A party shall be allowed to establish an appeal date earlier than a postal meter date, or the date of a document by presenting clear and convincing evidence.
- (b) When a party alleges that it filed an appeal that the Board of Review never received, the party shall present clear and convincing evidence of a timely filing, which may be corroborated by testimony or physical evidence linked to the appeal in question.
- (c) The Board of Review shall allow cross-examination in de novo hearings to establish the timeliness of an appeal, using the criteria set forth in 04 NCAC 24A .0106.

*History Note:* Authority G.S. 96-4; 96-15; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0107 TIMELINESS EXCEPTION**

Timeliness sanctions shall be waived by the Board of Review or its designee when the Board of Review, DES, or an agent state representative gives misleading information on appeal rights to a party, if the party:

- (1) establishes what he or she was told was misleading and how he or she was misled, using the criteria set forth in 04 NCAC 24F .0106;
- (2) identifies, if possible, the individual who misled him or her; and
- (3) establishes that the Board of Review or DES did not provide the party with any written instructions contrary to the misleading information with service of the decision being appealed.

*History Note:* Authority G.S. 96-4; 96-15; 96-15.3;  
Eff. July 1, 2018.

**SECTION .0200 – HIGHER AUTHORITY REVIEW OF APPEALS DECISION**

**04 NCAC 24F .0201 REQUIREMENTS FOR APPEAL STATEMENT TO BOARD OF REVIEW**

A written statement of appeal from an Appeals Decision to the Board of Review shall comply with 04 NCAC 24A .0104(1)(5).

*History Note:* Authority G.S. 96-4; 96-15;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24C .0501 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.

**04 NCAC 24F .0202 ACKNOWLEDGMENT OF APPEAL**

- (a) The receipt of a party's appeal from an Appeals Decision shall be acknowledged in writing by the Board of Review or its designee and sent to all parties of record.
- (b) The notice acknowledging receipt of an appeal shall inform each party of the following:
  - (1) the right to request oral arguments;
  - (2) the deadline to request oral arguments;
  - (3) the right to submit written arguments regarding the appeal;
  - (4) the deadline for submitting written arguments;

- (5) that the party may submit a written request for a record of the hearing proceeding pursuant to G.S. 96-15(f); and
  - (6) the procedures for obtaining a record of the hearing, including recordings or transcripts.
- (c) Records shall be provided in accordance with G.S. 96-4(x) and Section .0200 of 04 NCAC 24A.

*History Note: Authority G.S. 96-4; 96-15; 20 CFR 603;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24C .0502 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.*

#### **04 NCAC 24F .0203 ORAL ARGUMENTS**

- (a) Oral arguments before the Board of Review shall be granted at the discretion of the Board of Review.
- (b) A written request for oral arguments shall:
  - (1) be directed to the Board of Review pursuant to 04 NCAC 24A .0104(v).
  - (2) be received within 15 days of the date on the notice acknowledging receipt of an appeal from the Appeals Decision; and
  - (3) contain a statement that a copy of the request was mailed or personally delivered to the opposing party, if one exists.
- (c) If the request is granted, the Board of Review shall give written notice to each interested party to appear for oral arguments.
- (d) Notice to appear before the Board of Review to present oral arguments shall contain:
  - (1) the Higher Authority Decision docket number;
  - (2) the issue identification or Appeals Decision docket number;
  - (3) the identity of the party requesting oral arguments;
  - (4) the right of the non-requesting party to appear and present oral arguments;
  - (5) the date and time for oral arguments;
  - (6) the physical address of the location where oral arguments are scheduled to be held; and
  - (7) each party's right to legal representation.
- (e) The notice to appear for oral arguments shall be provided to each party by mail or electronic transmission at least 14 calendar days before the date scheduled for arguments in accordance with 04 NCAC 24A .0103.
- (f) Any request to reschedule oral arguments shall be for good cause as defined in 04 NCAC 24A .0105, and sent to the Board of Review pursuant to 04 NCAC 24A .0104(v), and to each party to the proceeding by personal service, mail, electronic transmission, or delivery service as defined under 04 NCAC 24A .0105. A request to reschedule oral arguments shall state each reason for the request.

*History Note: Authority G.S. 96-4; 96-15;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24C .0503 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.*

#### **04 NCAC 24F .0204 LEGAL REPRESENTATION OR SUPERVISION BY NORTH CAROLINA ATTORNEY BEFORE THE BOARD OF REVIEW**

- (a) An individual who is a party to a proceeding may represent himself or herself before the Board of Review.
- (b) A partnership or association may be represented by any of its members.
- (c) A corporation may be represented by an officer.
- (d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.
- (e) Notices or certification of legal representation by an attorney licensed to practice law in this State shall be in writing and presented to the Board of Review to become part of the official record.
- (f) Notices or certification of legal representation by an individual who is supervised by an attorney licensed to practice law in this State shall be in writing and presented to the Board of Review to become part of the official record, and shall contain:
  - (1) the name, business address, and telephone number of the supervising attorney;
  - (2) the supervising attorney's active North Carolina State Bar number; and
  - (3) the name, address, and telephone number of the person being supervised.
- (g) When a party has a legal representative, all documents or information required to be provided to the party shall be provided only to the legal representative, unless otherwise requested in writing to the Board of Review.

- (h) An address provided to the Board of Review for mailing or electronic transmission in a specific case shall not constitute a change of address with DES for purposes of 04 NCAC 24A .0102.
- (i) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

*History Note:* Authority G.S. 96-4; 96-15; 96-17;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24C .0504 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24F .0205 INTRODUCTION OF EVIDENCE IN HIGHER AUTHORITY HEARINGS**

- (a) The Board of Review shall allow each party 10 minutes from the time of the scheduled hearing to appear for the hearing.
- (b) If the appealing party fails to appear for the hearing and a continuance had not been previously granted, the Board of Review shall issue a Higher Authority Decision dismissing the appeal.
- (c) A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review to include in the official record of the hearing. A copy of any document or other evidence provided to the Board of Review shall be provided to the opposing party prior to the hearing.
- (d) A party offering 20 or more documents into evidence shall prepare a list of the documents in the order of their presentation. The list shall be provided to the Board of Review and to each party before the hearing to become part of the official hearing record.
- (e) If the Board of Review takes official notice of facts, whether under judicial notice or within the Board's specialized knowledge, the official notice and its source shall be stated on the record and noticed to the parties. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

*History Note:* Authority G.S. 96-4; 96-15; 96-15.3;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24C .0505 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24F .0206 CONTENT OF HIGHER AUTHORITY DECISION**

The Board of Review shall issue a written Higher Authority Decision that includes the following:

- (1) the names of the members of the Board of Review who participated in the review;
- (2) findings of fact, conclusions of law, and the decision of the Board of Review;
- (3) instructions for filing an appeal of the Higher Authority Decision to the superior court and the date the Higher Authority Decision was mailed; and
- (4) notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

*History Note:* Authority G.S. 96-4; 96-11.4; 96-15;  
Eff. July 1, 2015;  
Temporary Amendment Eff. March 1, 2016;  
Temporary Amendment Expired December 10, 2016;  
Amended Eff. April 1, 2017;  
Recodified from 04 NCAC 24C .0506 Eff. October 1, 2017.

### **SECTION .0300 – TAX LIABILITY HEARINGS**

#### **04 NCAC 24F .0301 APPEALING A TAX MATTER**

- (a) A written appeal regarding monetary eligibility denying a protest to a Wage Transcript and Monetary Determination shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(e).
- (b) A written appeal of a Tax Liability Determination shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(n).
- (c) A written appeal of a Tax Rate Assignment shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(o).

- (d) A written appeal of an Audit Result shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(p).
- (e) A written appeal of a Tax Assessment shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(q).
- (f) Written Exceptions to a Tax Opinion shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(r).

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1101 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24F .0302 SCHEDULING TAX HEARINGS**

- (a) A notice of the hearing shall be mailed to each party at least 14 days before the hearing date.
- (b) The hearing notice shall include the following:
- (1) identify the determination, decision, or result being appealed;
  - (2) the name of the appealing party;
  - (3) the date and time of the hearing;
  - (4) if requested at the time of the filing of the appeal, the physical location of an in-person hearing;
  - (5) the telephone number at which each party will be called for a telephone hearing;
  - (6) each issue, with statutory reference, to be heard and decided;
  - (7) the name and contact information for the Board of Review or designated Hearing Officer;
  - (8) the manner in which witnesses may offer evidence and participate in the hearing;
  - (9) each party's right to obtain a legal representative as defined in 04 NCAC 24A .0105;
  - (10) instructions for requesting a rescheduling of the hearing;
  - (11) notice that a party may object to a telephone hearing and request an in-person hearing; and
  - (12) a statement of each party's right to request the issuance of a subpoena for the production of records or individuals to appear to testify, and instructions for how to do so.

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1102 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24F .0303 TELEPHONE HEARINGS BEFORE THE BOARD OF REVIEW**

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1103 Eff. October 1, 2017;  
Amended Eff. July 1, 2018;  
Repealed Eff. May 1, 2021.

#### **04 NCAC 24F .0304 IN-PERSON HEARINGS**

- (a) Hearings shall be conducted in-person by the Board of Review, or a Board designee, as required by G.S. 96-4(q).
- (b) Upon good cause, as defined in 04 NCAC 24A .0105(28), the Board of Review, upon its own accord, may designate alternate means of hearing, for example, by telephone, video, or web conferencing
- (c) A party may object to the venue of hearing or alternate means of hearing designated by the Board. The Board will consider such objection if it is filed with the Board within 10 days of the issuance of a notice of hearing. The objection shall be in writing and provide good cause as to the reason for a request in a change of venue.

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1104 Eff. October 1, 2017;  
Amended Eff. May 1, 2021.



**04 NCAC 24F .0305 COMBINATION TELEPHONE AND IN-PERSON HEARINGS BEFORE THE BOARD OF REVIEW**

- (a) The Board of Review or designated Hearing Officer may conduct an in-person/telephone hearing to avoid prejudice, to ensure security, to comply with standards for appeal promptness, or to expedite an appeal.
- (b) A party may obtain an in-person/telephone hearing by filing a written objection to a telephone conference call hearing notice pursuant to 04 NCAC 24F .0303, or to an in-person hearing notice pursuant to 04 NCAC 24F .0304.
- (1) The objection shall state each reason that the party objects to appearing in the manner listed in the hearing notice.
  - (2) The objecting party shall state the manner in which it, or its witnesses, request to appear for the hearing.
  - (3) This request shall be directed to the Board of Review or Hearing Officer designated in the hearing notice.
- (c) The Board of Review or Hearing Officer shall consider a party's request to change its witnesses' appearance from a telephone or in-person hearing, and shall make a determination of whether the substantial rights of each party would be preserved by granting the party's request.
- (d) The Board of Review or Hearing Officer may grant a request to change an appearance by telephone or in-person for good cause as defined in 04 NCAC 24A .0105. If the request is granted, the official hearing record shall include the written request for the change, reflect the Board of Review's or Hearing Officer's determination that the substantial rights of each party would be preserved by granting the request, and each reason for the determination.
- (e) The objecting party shall appear in-person or by telephone as requested by the objecting party if the Board of Review or Hearing Officer grants the request.
- (f) The Board of Review or Hearing Officer may deny a request to change a party's appearance at a telephone or in-person hearing if:
- (1) the Board of Review or Hearing Officer believes that the requesting party's intent is to inconvenience the opposing party or delay the proceedings;
  - (2) the party or witnesses request to appear by telephone, and are less than 40 miles away from an in-person hearing location; or
  - (3) the request is made less than 24 hours before the hearing is scheduled to begin.
- (g) If a party's request for a change to a telephone or in-person hearing is denied, the Board of Review or Hearing Officer shall state the grounds for denial on the record, include the written request in the official records, and state the reasons for the denial in the written decision.
- (h) The Board of Review or Hearing Officer shall notify each party of the change prior to the hearing.

*History Note:* Authority G.S. 96-4; 96-15.3;  
Eff. July 1, 2018.

**04 NCAC 24F .0306 RESCHEDULING A TAX HEARING**

- (a) The Board of Review may continue or adjourn a hearing at any time.
- (b) A request for a continuance of a hearing made prior to the hearing date shall be in writing and shall specify the reasons for the request.

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1105 Eff. October 1, 2017.

**04 NCAC 24F .0307 SUBPOENAS**

- (a) Subpoenas to compel the attendance of witnesses and the production of records for any tax hearing may be issued by the Board of Review or its designated Hearing Officer.
- (1) A subpoena may be issued at the request of a party or on the Board of Review's or Hearing Officer's own motion.
  - (2) Any documentation showing service of the subpoena shall become part of the official hearing record.
- (b) Any party's request for a subpoena to be issued by the Board of Review or Hearing Officer shall be in writing, sent to the Board of Review or Hearing Officer, and shall include:
- (1) the name of the party requesting the subpoena;
  - (2) the claimant's name, if applicable;

- (3) the employer's name, if applicable;
  - (4) the docket number of the case;
  - (5) the name, address, and telephone number of each person sought for appearance at the hearing;
  - (6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
  - (7) the name and address of the individual or party in possession of any item sought; and
  - (8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.
- (c) The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.
- (d) Legal representatives shall issue subpoenas at their own expense and discretion.
- (e) Subpoenas shall be issued at least five business days before the date of the scheduled hearing.
- (f) Service of a subpoena shall be made by delivering a copy to the person, or by registered or certified mail, return receipt requested, unless a party or witness consents to service of the subpoena by other means, including electronic transmission.
- (g) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.
- (1) The objection shall be directed to the Board of Review or Hearing Officer prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.
  - (2) The Board of Review or Hearing Officer shall rule on the objection and notify the parties before the hearing. The reasons for the ruling shall be in writing or stated on the record during the hearing.

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1106 Eff. October 1, 2017;  
Amended Eff. July 1, 2018.

#### **04 NCAC 24F .0308 THE TAX OPINION**

- (a) Following the conclusion of a tax hearing, the Board of Review shall issue a tax opinion with respect to the appeal filed.
- (b) The tax opinion shall set forth:
- (1) a statement of the case;
  - (2) any findings of fact;
  - (3) conclusions of law;
  - (4) the final order with regard to the opinion rendered;
  - (5) the date the opinion was mailed;
  - (6) instructions for filing an appeal; and
  - (7) the time period within which an appeal shall be filed.
- (c) The Board of Review shall mail a copy of the tax opinion to each party to the appeal.

*History Note:* Authority G.S. 96-4;  
Eff. July 1, 2015;  
Recodified from 04 NCAC 24D .1107 Eff. October 1, 2017.

#### **04 NCAC 24F .0309 CONDUCT OF TAX HEARINGS BY THE BOARD OF REVIEW**

- (a) The Board of Review shall allow each party 10 minutes from the time of the scheduled hearing to appear for the hearing.
- (b) If the appealing party fails to appear for the hearing and a continuance had not been previously granted, the Board of Review shall issue a Tax Opinion dismissing the appeal.
- (c) A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review to include in the official record of the hearing. A copy of any document or other evidence provided to the Board of Review shall be provided to the opposing party prior to the hearing.

(d) A party offering 30 or more documents into evidence shall prepare a list of documents in the order of their presentation. The list shall be provided to the Board of Review and to each party before the hearing to become part of the official hearing record.

(e) If the Board of Review takes official notice of facts, whether under judicial notice or within the Board's specialized knowledge, the official notice and its source shall be stated on the record and noticed to the parties. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

*History Note:* Authority G.S. 96-4; 96-15.3;  
Eff. July 1, 2018.

#### **04 NCAC 24F .0310 BURDEN OF PROOF IN HEARINGS BEFORE THE BOARD OF REVIEW**

The burden of proof shall rest with the appealing party in any hearing on an appeal set forth in 04 NCAC 24F .0301.

*History Note:* Authority G.S. 96-4; 96-15.3;  
Eff. July 1, 2018.

#### **04 NCAC 24F .0311 ADMISSION OF OUT-OF-STATE ATTORNEY TO APPEAR BEFORE BOARD OF REVIEW**

(a) Pursuant to G.S. 84-4.1, attorneys residing in and licensed to practice law in another state may seek to be admitted to practice before the Board of Review to represent a client. Attorneys admitted pursuant to 04 NCAC 24C .0303 for the same matter are not required to seek admission pursuant to this Rule.

(b) An out-of-state attorney seeking to practice before the Board of Review, or the North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5), shall file a motion with the Board of Review that complies with the requirements of G.S. 84-4.1.

(c) A proposed Order Permitting Out-Of-State Attorney to Appear Pro Hac Vice shall be provided to the Board of Review with the motion.

(d) Following review of the motion, the Board of Review shall issue an order granting or denying the motion.

(e) Pro hac vice admission granted to practice before the Board of Review shall allow continued representation before the Board of Review in all administrative proceedings regarding the same matter. The Board of Review has the discretionary authority to deny a motion for pro hac vice admission even if the motion complies with the requirements of G.S. 84-4.1.

(f) Upon receipt of an order granting a motion for pro hac vice admission to practice before the Board of Review, the admitted out-of-state attorney or the associated North Carolina attorney shall pay the fees required by G.S. 84-4.1 to the North Carolina State Bar and General Court of Justice, and file a statement with the Board of Review documenting payment of the fees and the submission of any pro hac vice admission registration statement required by the North Carolina State Bar. A copy of the motion, Order, registration statement, and documentation reflecting payment of the fees shall be provided to the Board of Review to be included in the official hearing record.

*History Note:* Authority G.S. 84-4.1; 96-4; 96-17;  
Eff. July 1, 2018.

### **SUBCHAPTER 24G – UNEMPLOYMENT COMPENSATION DUE TO PUBLIC HEALTH EMERGENCY OR DISASTER DECLARATION**

#### **SECTION .0100 – UNEMPLOYMENT COMPENSATION DUE TO CORONAVIRUS AND COVID-19**

#### **04 NCAC 24G .0101 TEMPORARY WAIVER OF CERTAIN ELIGIBILITY REQUIREMENTS**

*History Note:* Authority G.S. 96-4; 96-14.1; 96-14.9; 96-15.01; 166A-19.30; 20 C.F.R. 604.4; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020;  
Emergency Adoption Eff. April 14, 2020;  
Emergency Adoption Expired Eff. June 30, 2020.

**04 NCAC 24G .0102 NOTICE THAT EMPLOYERS MUST GIVE TO EMPLOYEES AS A RESULT OF CORONAVIRUS**

*History Note:* Authority G.S. 96-4; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020;  
Emergency Adoption Eff. April 14, 2020;  
Temporary Adoption Eff. July 24, 2020;  
Temporary Adoption Expired Eff. May 14, 2021.

**04 NCAC 24G .0103 TEMPORARY WAIVER OF BENEFIT CHARGES TO EMPLOYER ACCOUNTS**

*History Note:* Authority G.S. 96-4; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020;  
Emergency Adoption Eff. April 14, 2020;  
Temporary Adoption Eff. July 24, 2020;  
Temporary Adoption Expired Eff. May 14, 2021.

**04 NCAC 24G .0104 TEMPORARY COVID-19 SUITABLE WORK PROVISIONS**

*History Note:* Authority G.S. 96-2; 96-4; 96-14.11(b); 96-15(a);  
Emergency Adoption Eff. June 26, 2020;  
Temporary Adoption Eff. September 25, 2020;  
Temporary Adoption Expired Eff. July 12, 2021.