

**DEPARTMENT OF LABOR**  
**DIVISION OF UNEMPLOYMENT INSURANCE**

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 3314(6) (19 **Del.C.** §§105(a)(8) and 3314(6))

19 **DE Admin. Code** 1202

**FINAL**

**ORDER**

**1202 Unemployment Insurance Regulations**

In accordance with 29 **Del.C.** §10118, and for the reasons set forth herein, the Delaware Department of Labor, Division of Unemployment Insurance (hereinafter "the Division") enters this Order adopting the Division of Unemployment Insurance Revised Regulation 17.0 on Disqualification for Benefits.

**NATURE OF THE PROCEEDINGS**

Pursuant to its authority under 19 **Del.C.** §§105(a)(8) and 3314(6), the Division proposes to adopt a revised regulation to establish procedures for notice to claimants and an opportunity for claimants to provide responsive information prior to the Division taking adverse action against the claimant, when the Division discovers that a claimant failed to report wages that the Division believes should have been reported.

The Division gave notice of its intent to adopt the proposed revised regulation by publication in the March 1, 2016 issue of the Delaware *Register of Regulations*. At that same time, the Division submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del.C.** Ch. 104. The Division solicited written comments from the public concerning the proposed revised regulation allowing the period of time for such submissions to remain open for the thirty (30) days mandated by 29 **Del.C.** §10118(a).

The Division received no written comments from the public in response to the notice of intention to adopt the proposed revised regulation. Therefore, no evaluation or summarization of comments is presented in the "Summary of Evidence" section herein.

**SUMMARY OF EVIDENCE**

In accordance with Delaware law, public notice regarding the proposed revised regulation was published in the Delaware *Register of Regulations*. A Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. The public comment period was open from March 1, 2016 through March 31, 2016.

The Division received no written comments in response to the notice of intention to adopt the proposed revised regulation during the public comment period.

**FINDINGS OF FACT**

The public was given the required notice of the Division's intention to adopt the proposed revised regulation and was given ample opportunity to provide the Division with comments opposing the Division's adoption of the proposed revised regulation. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No public comments were received. Thus, the Division finds that the proposed revised regulation, as set forth in the attached copy, which adds section 17.2 and subsection 17.2.1, should be adopted as in the best interest of the general public of the State of Delaware.

**TEXT AND CITATION**

The text of the proposed revised regulation 17.0 remains as published in the Delaware *Register of Regulations*, Volume 19, Issue 9 on March 1, 2016, and is attached hereto as Exhibit A.

**THEREFORE, IT IS SO ORDERED**, this 7th day of April, 2016, that the proposed Division of Unemployment Insurance Revised Regulation 17.0 on Disqualification for Benefits is adopted and shall become effective ten (10) days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 **Del.C.** §10118(e) and (g).

Thomas H. Ellis, Director

## 1202 Unemployment Insurance Regulations

### 1.0 Records

- 1.1 Each employing unit shall preserve for the period of the last 4 consecutive years such existing records as are indicated in the data hereinafter set forth and shall establish, maintain, and preserve, for a period of 4 years, records with respect to workers engaged in employment on and after the effective date of this regulation which shall show:
  - 1.1.1 For each pay period:
    - 1.1.1.1 The beginning and ending dates of such period.
    - 1.1.1.2 The total amount of remuneration paid for personal services, including commissions.
  - 1.1.2 For each worker:
    - 1.1.2.1 Their name and Social Security Number.
    - 1.1.2.2 Their wages paid for each pay period, showing separately:
      - 1.1.2.2.1 Remuneration including commissions paid in cash.
      - 1.1.2.2.2 Reasonable cash value of remuneration payable by the employer in any medium other than cash.
      - 1.1.2.2.3 Gratuities received from persons other than the employer.

### 2.0 Definition of Terms

**"Payroll period"** means that period of time for which an employer customarily makes a single payment or credit of remuneration to all or a group or groups of its employees.

A **"quarter"** or **"calendar quarter"** means one of the four periods of three consecutive calendar months which begin, respectively, on January 1, April 1, July 1, and October 1.

**"Wages paid"** means:

- (a) Wages actually paid, to the employee; or
- (b) Wages credited to the account of or set apart for the employee so that they may be drawn upon by the employee at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to the employee so that they may be drawn at any time, and their receipt brought within the employee's control and disposition.

**"Wages paid in a quarter"** means the total of all wages paid or accredited in accordance with subsections (a) and (b) of this section on any day falling within the calendar quarter.

### 3.0 Reports and Payments of Contributions

- 3.1 Contributions due under Part III, Title 19, **Delaware Code**, shall be payable quarterly based on "wages paid in a quarter" as set forth in Section 2.0 of this regulation.
- 3.2 Employers subject to Part III, Title 19, **Delaware Code**, shall report contributions due on forms prescribed or approved for this purpose by the Delaware Division of Unemployment Insurance and in accordance with instructions printed thereon (Form UC-8). Such reports shall be accompanied by payment of contributions.
- 3.3 Reports and payments of contributions shall become due on the last day of the month following the close of the quarter during which the wages are paid.
- 3.4 Reports and payments of contributions by an employer not previously subject to Part III, Title 19, **Delaware Code**, shall become due for the first time on the last day of the month following the close of that calendar quarter during which the 20th week of employment of one or more persons during the calendar year occurred. The employer shall at such time file separate reports with respect to each of the calendar quarters during the calendar year for which contributions are payable.

### 4.0 Identification of Workers Covered by Part III, Title 19, Delaware Code

- 4.1 Each employer shall ascertain the Social Security Number of each worker employed by the employer in employment subject to Part III, Title 19, **Delaware Code**.
- 4.2 The employer shall report the worker's Social Security number in making any report required by the Delaware Division of Unemployment Insurance with respect to a worker.

- 4.3 If an employer has in its employ a worker engaged in employment who does not have a Social Security number, such employer shall request the worker to show a receipt issued by an officer of the Social Security Administration acknowledging that the worker has filed an application for a Social Security number. The receipt shall be retained by the worker. In making any report required by the Delaware Division of Unemployment Insurance with respect to such a worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.
- 4.4 If a worker fails to report to the employer his correct Social Security number or fails to show the employer a receipt issued by an office of the Social Security Administration acknowledging that he has filed an application for a Social Security number, the employer shall inform the worker of the requirement to do so under the Federal Insurance Contributions Act.

## **5.0 Posting of Placards**

Every employer subject to the provisions of Part III Title 19, **Delaware Code**, shall post and maintain printed notices to his employees informing them that he is covered by Part III, Title 19, **Delaware Code**, and has been so registered by the Delaware Division of Unemployment Insurance. Such notices shall be in the form prescribed by the Delaware Division of Unemployment Insurance (Form UC-6), of such design and in such numbers as prescribed by the Delaware Division of Unemployment Insurance, and shall be posted in a conspicuous place in the plant, shop, office, room, or place where employees are employed and where they may readily be seen by them. No such notice shall be posted by any person, employing unit, or employer who has not complied with the provisions of Part III, Title 19, **Delaware Code**, and to whom an unemployment insurance account number has not been assigned by the Delaware Division of Unemployment Insurance, or who, in accordance with the provisions of the Delaware Code, has ceased to be an employer as defined in the Delaware Code.

## **6.0 Claims and Registrations**

REFERENCE: Section 3315, Title 19, **Delaware Code** Eligibility for Benefits

- 6.1 Except as otherwise provided in this regulation, any individual claiming benefits shall:
- 6.1.1 File a claim for benefits, either in-person at a Delaware Division of Unemployment Insurance Local Office or via the Internet (such claim shall be effective as of the Sunday immediately preceding the date of filing) and
  - 6.1.2 Register for work with the Delaware Division of Employment & Training.
- 6.2 Except as otherwise provided in this regulation, in order to establish eligibility for benefits, the claimant shall:
- 6.2.1 Report to a Delaware Division of Unemployment Insurance or Delaware Division of Employment & Training Local Office whenever instructed to do so by either Division; and
  - 6.2.2 File a continued claim for benefits each week; and
  - 6.2.3 the fact that they are able to work, available for work and actively seeking work each week.
- 6.3 A claimant will be ineligible for the receipt of unemployment insurance benefits for any week in which they are not able to work, available for work and actively seeking work, except that they will not be ineligible for such week if the Division of Unemployment Insurance finds that:
- 6.3.1 the claimant is attached to a job for which the date of return to employment is known and reasonably certain and is sufficiently near in time to make it futile to actively seek work; or
  - 6.3.2 to require the claimant to be able to work, available for work and actively seeking work would be otherwise oppressive or inconsistent with the purposes of Chapter 33 of Title 19, **Delaware Code**.

## **7.0 Address Requirement**

A claimant must provide a current address to the Delaware Division of Unemployment Insurance when a new, additional, or reopened claim is filed and provide any change in address thereafter to the Division during the entire length of time they are claiming entitlement to and receiving unemployment insurance benefits.

## **8.0 Payments to Interstate Claimants**

- 8.1 The following section shall govern the Delaware Division of Unemployment Insurance in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.
- 8.2 Definitions.
- As used in this section, unless the context clearly requires otherwise:

**"Agent State"** means any State in which an individual files a claim for benefits from another State.

**"Benefits"** means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance of any State.

**"Interstate Benefit Payment Plan"** means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed Individuals absent from the State (or States) in which benefit credits have been accumulated.

**"Interstate claimant"** means an individual who claims benefits under the unemployment insurance law of one or more liable States through the facilities of an agent State. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent State to work in a liable State unless the Delaware Division of Unemployment Insurance finds that this exclusion would create undue hardship on such claimants in specified areas.

**"Liable State"** means any State against which an individual files a claim for benefits through another State.

**"State"** includes Alaska, Hawaii, the District of Columbia, the Virgin Islands and Puerto Rico.

**"Week of unemployment"** includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed.

### 8.3 Registration for Work

8.3.1 Each interstate claimant shall be registered for work, through any public employment office in the agent State when and as required by the law, regulations, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.

8.3.2 Each agent State shall duly report, to the liable State in question, whether each Interstate claimant meets the registration requirements of the agent State.

### 8.4 Benefit Rights of Interstate Claimants.

8.4.1 If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file claims against any other State in which there are available benefit credits. For the purposes of this section, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

### 8.5 Claim for Benefits.

8.5.1 Claims for benefits or waiting-period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.

8.5.2 Claims shall be filed in accordance with agent State regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

8.5.2.1 With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to 1 week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

8.5.2.2 With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable State shall accept any claim which is filed within the time limit applicable to such claim under the law of the agent State.

### 8.6 Determinations of Claims.

8.6.1 The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.

8.6.2 The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an interstate claim.

### 8.7 Appellate Procedure.

8.7.1 The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

8.7.2 With respect to the time limits imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.

8.8 Extension of interstate benefit payments to include claims taken in and for Canada. This section shall apply in all its provisions to claims taken in and for Canada.

## **9.0 Registration and Claims of Certain Workers Who Become Totally Unemployed Because of a Mass Layoff Due to a Temporary Cessation of Work**

The Delaware Division of Unemployment Insurance is authorized to defer registrations for work and to modify the requirements for claiming weekly unemployment insurance benefits for those individuals unemployed because of a temporary mass layoff as provided in this section.

9.1 A temporary mass layoff is defined as a temporary layoff by an employer because of lack of work of 100 or more employees at or about the same time for a period not exceeding 45 consecutive calendar days following the last day of work or 63 consecutive calendar days following the last day of work for 100 or more employees temporarily laid off for a model change or retooling.

9.2 As soon as possible but not later than seven (7) days prior to the last day of work of 100 or more employees, the employer shall notify the Delaware Division of Unemployment Insurance of the last day of work, the reason for the layoff, the schedule date of their return to work and when practical, the names and Social Security numbers of the employees included in the layoff. If the Delaware Division of Unemployment Insurance determines that the layoff meets the requirements of a temporary mass layoff as defined in this section, the employees shall be eligible to file claims for benefits as hereinafter provided.

9.3 The employer shall post instructions furnished by the Delaware Division of Unemployment Insurance in conspicuous areas readily accessible to the employees concerning the proper procedure for filing claims during the layoff period. The employer shall prepare and give each employee unemployed because of the temporary mass layoff on his last day of work, a UC-101-T, "Notice of Temporary Mass Layoff" form to be furnished by the Delaware Division of Unemployment Insurance. However, this form shall not be issued for any employee off from work because of illness, disability, or scheduled vacation with pay on the day the temporary layoff begins. These employees shall be issued the required forms by the employer upon the termination of the period of illness, disability, or scheduled paid vacation.

9.4 A claimant's week of unemployment for the purpose of this section shall be the seven-day consecutive calendar day period used by the employer as his payroll week.

9.5 Registration for work by an individual unemployed because of a temporary mass layoff shall be deferred.

9.6 An original or additional claim will be effective on the first day of the employer's payroll week in which the last day of work occurred if the employer issued a UC-101-T, "Notice of Temporary Mass Layoff" form on the last day of work and the form is filed by the claimant within seven days thereafter. If the employer does not issue the form on the last day of work but the claimant files within seven (7) days thereafter, his original or additional claim will be effective on the first day of employer's payroll week in which his last day of work occurred. Where a claimant is issued the form on his last day of work but fails to file within seven (7) days thereafter, his original or additional claim will be effective on the first day of the employer's payroll week in which he actually files the form. As used herein the word "file" or "filed" shall mean the date on which a UC-101-T, "Notice of Temporary Mass Layoff" form is delivered to the appropriate unemployment insurance local office.

9.7 Weekly benefits shall be claimed using any one of the options provided by the Delaware Division of Unemployment Insurance.

9.8 An individual must report to their unemployment insurance local office when directed to do so by the Delaware Division of Unemployment Insurance.

## **10.0 Week Defined**

10.1 For the purposes of the claiming and payment of unemployment insurance benefits, "week" means:

10.1.1 Calendar week (beginning 12:01 a.m. Sunday morning); or

10.1.2 Any seven (7) consecutive day period with respect to which no wages are payable to an individual and during which he performs no services, which occurs within two (2) calendar weeks in each of which he earns wages equal to or in excess of his weekly benefit amount plus his partial earning allowance. Claims filed under this provision may be filed within twenty-eight (28) days following the close of the second of the calendar weeks in question; or

10.1.3 The Delaware Division of Unemployment Insurance may authorize the employer's payroll week for the payment of partial claims and temporary mass layoff claims.

- 10.2 Calendar week shall be used for the filing of claims and the payment of benefits under 1(a) above for all claims filed on or after July 1, 1972, except for those claims in current compensable status which will continue on a flexible week basis for the duration of their current period of unemployment.
- 10.3 Except in cases where claims are filed under 1(b) or 1(c) above, the claim series will begin with the first day of the calendar week in which an unemployed individual reports and registers and files his initial or reopened claim at a local employment office of the Delaware Division of Unemployment Insurance.
- 10.4 Whenever the benefit week overlaps two benefit years, such week shall, for the purpose of benefit payment with respect to such week, be deemed to be paid in the preceding benefit year; provided, that when the last day of the preceding benefit year falls within a benefit week with respect to which an individual has met the eligibility requirements of the Act, the ending date of the benefit year may be extended for a period not to exceed six (6) days; provided, however, that such inclusion of the week within the preceding benefit year shall not change the claim week pattern as established during the current period of unemployment in the first of such two benefit years.
- 10.5 The effective date of claim for succeeding transitional claims shall be the Sunday date immediately following the benefit year ending date on the preceding benefit year; provided, the benefit week was extended under 4 above to include the Saturday date immediately prior to such Sunday date. However, if the benefit year was not extended, or if extended did not include the Saturday date prior to such Sunday date, the effective date of the succeeding benefit year will be the first day immediately following the date of the last benefit week in the prior benefit year.
- 10.6 If the claimant is not eligible monetarily for a transitional claim, and if the last day of his benefit year falls within a benefit week with respect to which he has met the eligibility requirements of the Act, the ending date of his benefit year may be extended for a period not to exceed six (6) days for the purpose of paying the last benefit week.

#### **11.0 Proration of Deductible Lump Sum Payments for Determination of Weekly Benefit Amount Payable**

When determining the benefit amount payable to an individual in any week, lump sum payments, deducted from an individual's weekly benefit amount by the Division of Unemployment Insurance pursuant to sections 3302(17), 3313(b), and 3313(f), Title 19, **Delaware Code**, shall be prorated and deducted from the individual's weekly benefit amount until said lump sum payment is exhausted. For the purpose of this section, "prorated" shall mean the proportional distribution, as determined by the Division of Unemployment Insurance, of a lump sum payment on a weekly basis.

#### **12.0 Disclosure of Information**

Pursuant to Section 3125 (4), Title 19, **Delaware Code**, the disclosure of information contained in its records by the Delaware Division of Unemployment Insurance will be authorized, upon request, in the following cases for the following purposes:

- 12.1 To any properly identified claimant for benefits or payments under an unemployment compensation or readjustment allowance law of the Federal Government or of a State or to his duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.
- 12.2 To any officer or employee of any agency of the Federal Government or of a State government, lawfully charged with the administration of an unemployment compensation or readjustment allowance law, but only for purposes reasonably necessary for the proper administration of such law.
- 12.3 To any officer or employee of any agency of the Federal Government or of a State government, lawfully charged with the administration of a law providing for old-age assistance or other public assistance, work relief, pension, retirement or other benefit payments, but only for purposes reasonably necessary for the proper administration of such law.
- 12.4 To applicants, employers and the public, general information concerning employment opportunities, employment levels and trends, and labor supply and demand, provided such release or publication does not include information which discloses the identity of individual applicants, employers or employing establishments, except where such party agrees to said release.
- 12.5 To individuals, employers, Federal government agencies and State government agencies, information for purposes other than as specified in this section if such disclosure will not impede the operation of, and is not inconsistent with the purpose of the Delaware Department of Labor and is not prohibited by applicable federal law regarding the confidentiality of unemployment insurance program data/information, and is authorized in writing in individual cases by the Delaware Secretary of Labor.

- 12.6 Disclosure of information shall be made pursuant to 19 **Delaware Code** §3125(4). Officials and employees of those governmental agencies to whom such disclosure is to be made shall include, but is not limited to the following:
- 12.6.1 Delaware Department of Labor
  - 12.6.2 Delaware Department of Health and Social Services
  - 12.6.3 Delaware Department of Finance
  - 12.6.4 Delaware Department of Justice
  - 12.6.5 Delaware Economic Development Office
  - 12.6.6 Secretary of Labor of the United States
  - 12.6.7 Internal Revenue Service
  - 12.6.8 United States Postal Service
  - 12.6.9 United States Veterans' Administration
  - 12.6.10 United States Department of Justice
- 12.7 With respect to disclosure of information, all individuals or organizations to which information is disclosed under this section which discloses the identity of an individual or an employing unit shall be bound by the requirements of 19 **Delaware Code** §3125 regarding confidentiality of the information disclosed and shall be subject to the sanctions set out in that section for improper disclosure. The use of such information shall be limited to the purposes for which it was disclosed to the recipient as permitted by this regulation and shall be limited to the purposes reasonably necessary for the law administered by such agency.
- 12.8 With respect to disclosure of information, unless the disclosure relates to the administration of unemployment law or a function of the Division of Unemployment Insurance imposed by state or federal law, no disclosure of information shall be made under these regulations unless arrangements have been made to reimburse the Division of Unemployment Insurance for the actual costs of providing the information to the recipient.

### **13.0 Joint Accounts of Employers**

Section 3352, Title 19, **Delaware Code** regarding Joint Accounts of Employers, provides that the Department may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers subject to assessments under this Chapter.

Accordingly, the Department adopts the following procedure:

- 13.1 Establishment
- 13.1.1 A joint account will be established upon application by two or more employers, if it is proven to the satisfaction of the Division of Unemployment Insurance that the employing units have substantially the same ownership involving common or majority control of equity, however evidenced. An application for a joint account must be made on Form UC-1 or by separate letter indicating the entities, officers, stockholders, and percentages of ownership interest. The establishment of a joint account will be effective for the calendar quarter in which such application is received. The Division of Unemployment Insurance may request all necessary information to make such determination; or
  - 13.1.2 A joint account will be established when the Division of Unemployment Insurance determines that a reorganization of previously subject employing units having substantially the same ownership has occurred, and such reorganization may adversely affect the solvency of the Unemployment Compensation Fund. Such joint account will be effective within the calendar quarter that reorganization occurs.
- 13.2 Maintenance
- 13.2.1 Upon establishment of a joint account involving two (2) or more employers, regardless of whether such employing units were or were not previously subject to this Chapter, their individual accounts will be merged and maintained as if they constituted a single employer's account for experience rating purposes. However, each employing unit will continue to file reports and pay contributions under its individual account number.
- 13.3 Dissolution
- 13.3.1 Once established, a joint account cannot be dissolved so long as the individual employing units remain under substantially the same ownership.
  - 13.3.2 Whenever any employing unit included in a joint account is purchased or otherwise acquired by outside interests, such employing unit will be given a new employer account number and assigned a contribution rate in accordance with Section 3348 of this Chapter.

### **14.0 New Employer Rate of Assessment**

Section 3348, Title 19, **Delaware Code**, regarding Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; and standard rate of assessment, provides:

- 14.1 For any employer, excluding those employers in NAICS categories 236, 237, and 238 who become subject to this Chapter, the new employer rate shall be the average employer assessment rate.
- 14.2 For any employer in NAICS categories 236, 237, and 238 who becomes subject to this Chapter, the new employer rate shall be the average industry assessment rate in that employer's particular NAICS category (carried to 4 places) or the average construction industry assessment rate, whichever is the greater. With regard to Section 3348, an employing unit that alters its legal status in any way, such as changing from a sole proprietorship or a partnership to a corporation, or from one corporate entity to another as a result of re-incorporation, merger, or a transfer of employees between such entities or whenever an employing unit that otherwise changes its trade name or business identity while remaining under substantially the same ownership will not be considered to have become first subject to Chapter 31, Delaware Unemployment Compensation Code upon such reorganization and shall not be entitled to a new employer rate of assessment. Such an employer will be considered to be a reorganized employer, not a new employer.
- 14.3 A reorganized employer shall retain the contribution rate and be liable for all contributions, interest and penalties owed by the employing unit before the reorganization. However, if such reorganization shall involve the contribution rates of two (2) or more employing units, having substantially the same ownership, regardless of whether such employing units were or were not previously subject to this Chapter, the contribution rate for the reorganized employer shall be determined in accordance with Section 3352, Title 19, **Delaware Code** and Section 13.
- 14.4 The Secretary of Delaware's Department of Labor may waive the provisions of this Section as they apply to a reorganized employer if said employer, prior to reorganization, is determined by the Division of Unemployment Insurance not to be delinquent with the regard to the payment of unemployment assessments and the application of such a regulation would be inconsistent with the economic development policies of the State of Delaware.

#### 15.0 Involuntary Leaving Work Due To Illness

With regard to Section 3314(1), Title 19, **Delaware Code**, an individual who elects a layoff in lieu of sickness and accident benefits provided under an employer benefit program or who elects a layoff in lieu of exercising the right to bump an employee with less seniority who is performing work that said individual can perform within his medical restrictions will not be considered to be an individual leaving work involuntarily because of illness, but shall be considered to have left his work voluntarily without good cause attributable to such work and shall be subject to the disqualification provision of this regulation.

#### 16.0 Eligibility for Benefits

- 16.1 Section 3315(1) of Title 19, **Delaware Code** provides that "the Department may, by regulation, waive or alter either or both of the requirements of this section.
- 16.2 Accordingly, "has registered for work" as it appears in §3315(1) of Title 19, **Delaware Code** shall mean any registration process, including any reemployment services or reemployment assessments as required by the Delaware Division of Employment and Training or the Delaware Division of Unemployment Insurance.

#### 17.0 Disqualification for Benefits

- 17.1 Section 3314(3) of Title 19, **Delaware Code** provides in part that an individual shall be disqualified for benefits "if he has refused to accept an offer of work which he is reasonably fitted....."
  - 17.1.1 The determination of whether an individual is reasonably fitted for an offer of work that has been refused shall be based on the individual's previous work history, education, training, the O\*NET (Occupational Information Network) Code assigned by the Delaware Division of Employment and Training, and the results of any skills assessment of the individual made by the Delaware Division of Employment and Training.
- 17.2 Section 3314(6) of Title 19, **Delaware Code** provides that an individual shall be disqualified for benefits "if the Department determines such individual has made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual was not lawfully entitled....."
  - 17.2.1 When the Delaware Division of Unemployment Insurance cross-matches an individual's eligibility to receive benefits through a wage or other matching program and determines that wages were not reported by the individual, or otherwise discovers wages not reported by the individual, prior to taking any adverse



action against the individual, the Delaware Division of Unemployment Insurance shall send the individual a notice providing the individual with an opportunity to submit additional information to contest the information discovered by the Delaware Division of Unemployment Insurance. The individual will have seven (7) days from the date the notice is mailed to respond to the notice. If the individual does not timely respond to the notice, the Delaware Division of Unemployment Insurance will make a decision based on the information it has obtained through its investigation. If the individual does timely respond to the notice, the Delaware Division of Unemployment Insurance will make a decision based on all information obtained through its investigation, including the individual's response.

#### **18.0 Interest on Past Due Assessments and Reimbursement Payments in Lieu of Assessments**

Pursuant to Section 3357, Title 19, **Delaware Code** regarding "Interest on past due assessments and reimbursement payments in lieu of assessments": Assessments and reimbursement payments in lieu of assessments which remain unpaid on the date they are due and payable, as prescribed by the Delaware Division of Unemployment Insurance, shall bear interest at the rate of 1.5% per month or fraction thereof from and after such date until payment plus accrued interest is received by the Delaware Division of Unemployment Insurance.

#### **19.0 Employment Training Tax**

- 19.1 Section 3401(a), Title 19, **Delaware Code** provides: "In addition to all other payments to the State due under this Title, each employer liable for assessments under Chapter 33 of this Title shall also be liable for a special assessment which shall be levied at the rate of .15% on all taxable wages, as defined in Section 3302(17) of this Title, payable by each such employer".
- 19.2 For the purpose of this regulation, the special assessment, also referred to as the "Training Tax", shall be billed on a semi-annual basis to each employer by the Delaware Division of Unemployment Insurance, based on reported taxable wages or on assessed taxable wages as estimated and determined by the Delaware Division of Unemployment Insurance under the provisions of Section 3359 of this Title. The semi-annual bill will cover the two calendar quarters, April 1- September 30 or October 1 - March 31 respectively, whichever are the two most recently completed calendar quarters prior to each billing.
- 19.3 Each employer shall be billed by the Delaware Division of Unemployment Insurance for the special assessment amount due not later than July 31 and January 31 of each year and such amount shall be considered delinquent 30 days after the date such bill was mailed. Interest shall accrue and be collectible by the Delaware Division of Unemployment Insurance on all unpaid assessments as prescribed in Section 3357 of this Title and Section 18.

#### **20.0 Registration For Work**

- 20.1 Section 3315(1) Title 19, **Delaware Code** regarding "eligibility for benefits" provides that the Department may, by regulation, waive or alter the registration for work requirement.
- 20.2 Accordingly, the Delaware Division of Unemployment Insurance prescribes that the following unemployed individuals will not be required to register for work with the Delaware Division of Employment and Training to be eligible for the receipt of benefits:
  - 20.2.1 Any individual on a temporary layoff who has a definite "return-to-work" date which has been verified by the Delaware Division of Unemployment Insurance with the individual's separating employer.
  - 20.2.2 Any individual who is an active member of a trade union and who is actively seeking work through a union hiring hall as verified by the Delaware Division of Unemployment Insurance.
  - 20.2.3 Any individual who is attached to a specific job as evidenced by a pattern of seasonal/periodic layoff and subsequent rehiring by the same employer over the most recent three (3) year period.

#### **21.0 Seasonal Employment**

- 21.1 Section 3316(b), Title 19, **Delaware Code** provides that: "No occupation or industry shall be deemed to provide seasonal employment that is not part of the first processing of agricultural products and/or seafood products."
- 21.2 or the purposes of this regulation, the first processing of agricultural products and/or seafood products shall refer to those occupations and industries in the following NAICS (North American Industry Classification System) categories (carried to six digits):
  - NAICS Code Major Occupation/Industry Group
  - 111140 Agricultural Production - Crops

111160 Agricultural Production - Crops  
111150 Agricultural Production - Crops  
11110 Agricultural Production - Crops  
111120 Agricultural Production - Crops  
111130 Agricultural Production - Crops  
111150 Agricultural Production - Crops  
111191 Agricultural Production - Crops  
111199 Agricultural Production - Crops  
111920 Agricultural Production - Crops  
111910 Agricultural Production - Crops  
111930 Agricultural Production - Crops  
111991 Agricultural Production - Crops  
111211 Agricultural Production - Crops  
111199 Agricultural Production - Crops  
111219 Agricultural Production - Crops  
111940 Agricultural Production - Crops  
111992 Agricultural Production - Crops  
111998 Agricultural Production - Crops  
111219 Agricultural Production - Crops  
111333 Agricultural Production - Crops  
111334 Agricultural Production - Crops  
111332 Agricultural Production - Crops  
111335 Agricultural Production - Crops  
111310 Agricultural Production - Crops  
111320 Agricultural Production - Crops  
111331 Agricultural Production - Crops  
111339 Agricultural Production - Crops  
111336 Agricultural Production - Crops  
111411 Agricultural Production - Crops  
111419 Agricultural Production - Crops  
111998 Agricultural Production - Crops  
115113 Agricultural Services  
115114 Agricultural Services  
115119 Agricultural Services  
115111 Agricultural Services  
11515 Agricultural Services  
115116 Agricultural Services  
311422 Food and Kindred Products  
311999 Food and Kindred Products  
311421 Food and Kindred Products  
311211 Food and Kindred Products  
311423 Food and Kindred Products  
311999 Food and Kindred Products  
311421 Food and Kindred Products  
311941 Food and Kindred Products  
311411 Food and Kindred Products  
311711 Food and Kindred Products  
311712 Food and Kindred Products

**17 DE Reg. 325 (09/01/13)**

## **22.0 Partial Unemployment Insurance**

- 22.1 **Definitions.** As used in this section, unless the context clearly requires otherwise:
- “**Partially unemployed individual**” means a partially unemployed individual is an employee who, during any given week, is still employed by his or her employer but worked less than his or her regular full-time hours because of the lack of full-time work.
- “**Week of partial unemployment**” means, with respect to a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his or her pay period week. With respect to a partially unemployed individual whose wages are not paid on a weekly basis (e.g., bi-weekly, monthly) a week of partial unemployment shall be any consecutive seven day period the Division may prescribe as to any employee or group of employees as it deems appropriate.
- 22.2 **Original Benefit Year Claim.** In order to file a claim for partial unemployment insurance, a partially unemployed individual must establish an original benefit year claim in person at one of the Division’s local offices or by using the Division’s on-line filing system.
- 22.3 **Responsibility To File Low Earnings Report (Form UC-114).** After the end of any week in which an employer has furnished any of its employees with less than regular full-time work (or the earnings equivalent thereto), on the customary payday for the pay period during which full-time work was unavailable the employer or the employee shall deliver a completed Low Earnings Report (Form UC-114) to the nearest Division local office signed by both the employer and the employee.
- 22.4 **Division’s Responsibility on Receipt of Form UC-114.** Upon receiving a Form UC-114, the Division shall promptly process the information contained in it so that a timely payment of unemployment insurance may be made to the partially unemployed individual who has established an original benefit year claim. For any given week, if the earnings stated on a Form UC-114 exceed the earnings allowance for the partially unemployed individual based on his or her weekly benefit amount, the Division will mail a notice to the affected employee stating the reason why no partial unemployment insurance is owed for the week in question.
- 22.5 **Time For Filing Claims for Partial Unemployment.** No claim for partial unemployment insurance benefits may be made more than 14 days after the week ending period reflected on the Form UC-114 being filed.
- 22.6 **Employer Records in Connection with Partial Unemployment.** In addition to the records required to be maintained by employers set forth in Section 4.0, each employer shall maintain for a period of four years payroll records containing the following information on each employee that was determined to be eligible to receive partial unemployment insurance:
- 22.6.1 the amount of wages earned by week;
  - 22.6.2 the specific dates of weeks of less than full-time work by the employee; and
  - 22.6.3 the number of hours of work lost by each employee, if any, due to the employee’s unavailability for work.

**19 DE Reg. 64 (07/01/15)**

**19 DE Reg. 1022 (05/01/16) (Final)**