

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule modification adopted by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development

Date: July 24, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”)

Effective Date: Retroactive to March 9, 2020 (the date E.O. 103 was approved by the Governor)

Expiration Date: December 31, 2020, the expiration date for Pandemic Unemployment Assistance (PUA) under the Coronavirus Aid, Relief and Economic Security Act (CARES Act), P.L. 116-136; unless PUA is extended, in which case, the extended expiration date for PUA under the CARES Act.

This is an emergency modification of N.J.A.C. 12:17-6.3(a) regarding the bi-weekly filing of a claim for partial unemployment benefits by a self-employed individual. A claimant may be eligible for partial unemployment benefits while working part-time due to lack of work. Such a claimant’s weekly benefit amount is reduced dollar-for-dollar for all earnings in excess of 20 percent of the claimant’s full weekly benefit rate. Under the existing rule, an individual who is filing a claim for partial unemployment benefits is required to provide the following information for each week claimed: gross remuneration amount, number of hours worked, and, if so instructed, the employer’s name, address, and telephone number. Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Labor and Workforce Development is modifying its rules as follows:

Modified N.J.A.C. 12:17-6.3(a) would address the bi-weekly filing of a claim for partial PUA benefits by a self-employed individual under the CARES Act. Self-employed individuals, also known as independent contractors, are not eligible for unemployment benefits, but may be eligible for PUA benefits. The modified rule would state that a self-employed individual who is claiming partial PUA benefits is required to provide all of the same information required of a partial unemployment benefits claimant under subsection (a), but must report all earnings in self-employment during the week he or she is claiming partial PUA benefits as wages. This is

necessary, because the Department's computerized unemployment benefits system, which is used to process all PUA claims, is not designed to capture and determine benefit payments to account for earnings in self-employment, but rather, is designed *only* to capture and determine benefit payments to account for wages. Consequently, in order to accurately calculate the weekly benefit amount of a self-employed partial PUA claimant, when the Department's computerized bi-weekly claim form prompts the PUA claimant to report all wages earned during the benefit week, the Department must be empowered to instruct the claimant to report earnings during the week in self-employment as wages. In the absence of a rule requiring the reporting of self-employment earnings in this manner, the Department's instruction to so report could potentially be ignored by PUA claimants without consequence to those claimants and to the considerable detriment of the Unemployment Compensation Fund and, ultimately, to the detriment of the Federal government which has pledged to reimburse the Fund for all PUA benefit payments. The Department has a responsibility to do everything in its power to ensure that this does not occur.

I find for the foregoing reasons that modification of N.J.A.C. 12:17-6.3(a) so as to require the self-employed claimant for partial PUA benefits to report all earnings in self-employment during the benefit week as wages is necessary, because the potential cost to the State and Federal governments if these earnings are not so reported would be detrimental to the public welfare during this emergency.

Full text of the modification follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:17-6.3 Registration and filing claims

(a) An individual claiming partial unemployment benefits shall file a bi-weekly benefit claim as required by N.J.A.C. 12:17-4.3(a), and shall provide for each week, the gross remuneration amount, number of hours worked, and, if so instructed, the employer's name, address, and telephone number.

1. A self-employed individual claiming partial Pandemic Unemployment Assistance (PUA) under the Federal Coronavirus Aid, Relief and Economic Security Act (CARES Act), P.L. 116-136, shall file a bi-weekly benefit claim in the manner described in this subsection (a), and shall for each week report all self-employment earnings as wages; that is the PUA claimant shall certify to the weekly amount of self-employed earnings received and shall report those earnings as wages so as to enable the Division to calculate an appropriate partial weekly PUA benefit amount consistent with the Division's method for calculating a partial weekly unemployment benefits amount.

i. For the purpose of this paragraph, "received" shall mean when the claimant actually receives payment for the services performed. For example, if a self-employed freelance writer spent 10 hours during the week ending May 16, 2020 researching and writing an article, delivered that article to a magazine during the same week, and was paid for the article by the magazine during the week ending June 6, 2020, the self-employed freelance writer who

is collecting PUA benefits would report those earnings (as wages) for the week ending June 6, 2020; not for the week ending May 16, 2020.

(b) (No change.)

July 24, 2020

Date

A handwritten signature in black ink, appearing to read "R. Asaro-Angelo", written over a horizontal line.

Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce
Development