

Employment Law Update

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Contact Information

FEDERAL ENFORCEMENT AGENCIES AND CONTACT NUMBERS: ²

U.S. Equal Employment Opportunity Commission (EEOC) [issues regarding race, religion, national origin, age, disability, sex and pregnancy discrimination or harassment]:

Charlotte: (704) 344-6682
Raleigh: (919) 856-4064
Greensboro: (336) 547-4188
National: (800) 669-4000
Website: www.eeoc.gov

National Labor Relations Board (NLRB) [claims related to union issues]
(336) 631-5201; www.nlr.gov

U.S. Dept. of Labor Wage and Hour Division [minimum wage and overtime issues; family medical leave act issues]

Charlotte: (704) 749-3360 [covers Winston-Salem area west]
Raleigh: (919) 790-2741 [covers Greensboro area east]
National: (866) 4-USWAGE (866-487-9243)
Website: <https://www.dol.gov/whd/>

STATE ENFORCEMENT AGENCIES AND CONTACT NUMBERS:

N.C. Department of Labor - Employment Discrimination Bureau (EDB) [issues regarding retaliation based on workers compensation claim, wage & hour complaint, etc.] **(919) 807-2831 or 1-800 NCLABOR (625-2267);**
<http://www.nclabor.com/edb/edb.htm>

N.C. Dept. of Labor Wage & Hour Office [issues regarding unpaid wages]
(919) 807-2796 or 1-800NCLABOR 625-2267); <http://www.nclabor.com/wh/wh.htm>

N.C. Division of Employment Security [issues related to unemployment benefits].
(919) 707-1290; <https://desncc.com/des>

N.C. Industrial Commission [workers' compensation claims]
(919)-807-2501 or (800) 688-8349; <http://www.ic.nc.gov/>

Access to Personal Files FAQs

As an employee of a private business, may I access my personnel file?

- For private employers, the general answer is no. Exceptions can include if a right to access is provided in a Company policy or Employee Handbook.
- Most public employees have a statutory right to access their personnel files.

Discharge FAQs

What does at-will employment mean?

- North Carolina is an at-will state, which means you and your employer are each entitled to terminate the relationship for any lawful reason, with or without advance notice.

Are you an at-will employee?

- All employment in North Carolina is generally at-will.
- However, if you and your employer agree to a specific employment period through written or oral statements or through a written contract, then employment may not be at-will.

What are some examples of an unlawful reason for ending my at-will employment relationship?

- For employers with more than 15 employees, federal law prohibits discharge on the basis of your race, sex, religion, national origin, color, or pregnancy. See, https://www.eeoc.gov/employers/coverage_private.cfm.
- For employers with more than 20 employees, federal law prohibits discharge on the basis of your age or disability. See, https://www.eeoc.gov/employers/coverage_private.cfm.
- Retaliation for engaging in following activities:
 - filing or being a witness in an EEO charge, complaint, investigation, or lawsuit
 - communicating with a supervisor or manager about employment discrimination, including harassment
 - answering questions during an employer investigation of alleged harassment
 - refusing to follow orders that would result in discrimination
 - resisting sexual advances, or intervening to protect others
 - requesting accommodation of a disability or for a religious practice
 - asking managers or co-workers about salary information to uncover potentially discriminatory wages

Drug Testing FAQs

Are employers required to conduct drug tests?

- Federal law neither requires nor prohibits drug tests. North Carolina allows employers to require applicants and employees to take drug tests under appropriate procedural requirements outlined in N.C. General Statutes Chapter 95 Article 20. See, https://ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_20.pdf.

Who pays for the drug test?

Employers should pay for all controlled substance examinations unless examinees requests a “retest” of a positive sample. See, 13 N.C. Admin. Code 20.0601; <http://reports.oah.state.nc.us/ncac/title%2013%20-%20labor/chapter%2020%20-%20controlled%20substances%20examination%20regulation/13%20ncac%2020%20.0601.pdf>.

Can my employer conduct drug tests on the premises?

- If you are a prospective employee, then your potential employer can both collect the sample and conduct the screening test on-site, provided that samples that demonstrate a positive

drug test result are sent to an approved laboratory for confirmation. See, https://ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_20.pdf However, if you are a current employee, your employer can still collect the sample on-site, but it must then send the sample to an approved laboratory to perform the screening test. See, 13 NCAC 20.0202; <http://reports.oah.state.nc.us/ncac/title%2013%20-%20labor/chapter%2020%20-%20controlled%20substances%20examination%20regulation/13%20ncac%2020%20.0202.pdf>.

How can I determine if the laboratory used for screening (testing) my sample is an approved lab?

Approved labs must be certified by either the U.S. Department of Health and Human Services or the College of American Pathologists. See, 13 NCAC 20.0304; <http://reports.oah.state.nc.us/ncac/title%2013%20-%20labor/chapter%2020%20-%20controlled%20substances%20examination%20regulation/13%20ncac%2020%20.0304.pdf>.

Is parental consent required prior to a drug test for employees who are less than 18 years of age?

- Parental consent is not required by the North Carolina drug testing law; however, employers may wish to get consent for other legal reasons.

Initial notice to examinees?

- The examiner must provide examinees with written notice of their rights and responsibilities under the N.C. Controlled Substance Examination Regulation Act (“CSERA”). See, 13 NCAC 20.0401; <http://reports.oah.state.nc.us/ncac/title%2013%20-%20labor/chapter%2020%20-%20controlled%20substances%20examination%20regulation/13%20ncac%2020%20.0401.pdf>.

Does the North Carolina drug testing law (i.e. the CSERA) cover testing for alcohol?

- No. Alcohol is not listed in N.C. Gen. Stat. § 90-87(5) as one of the drugs that can be tested under this law. See, https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_90/GS_90-87.html.

Garnishment FAQs

What amounts are exempt from or subject to garnishment?

- Wages for personal services at any time within 60 days preceding an order of execution are exempt from garnishment if the earnings are necessary for the support of the employee's family. See, N.C. Gen. Stat. Article 31 § 1-362; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_1/Article_31.pdf.

What must an employer do after being served with a garnishment order?

- An employer must withhold wages as instructed in the order and file an answer.

May an employer charge any fees for compliance with a garnishment order?

- The employer may deduct \$1 from an employee's remaining wages for each payment made toward a debt owed to public hospitals. Also, the employer may retain an additional \$1 for each payment under a garnishment order to recover fraudulent public assistance payments. See, N.C. Gen. Stat. § 95-25.8(a)(2); https://www.ncleg.net/enactedlegislation/statutes/html/byarticle/chapter_95/article_2a.html.

Who should an employer contact with questions about a garnishment order?

- The issuer of the order.
- General information is available at: <https://www.labor.nc.gov/workplace-rights/employee-rights-regarding-time-worked-and-wages-earned/deductions-wages>.

State Whistleblower Protection FAQs

What is a retaliatory or discriminatory employment action?

- A retaliatory or discriminatory action is any adverse employment action in terms, conditions, privileges or benefits of employment. Examples include:
 - discharge
 - suspension
 - demotion and/or reduction in wages
 - retaliatory relocation

See, <https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-is-a-retaliatory-or-discriminatory-employment-action?>

Who can file a complaint pursuant to the N.C. Retaliatory Employment Discrimination Act (“REDA”)?

- Any affected employee.
- Any person who causes a protected activity listed above to be initiated on an employee's behalf.
- Any person who exercises any right on behalf of an employee under the protections of the Occupational Safety and Health Act, the Wage and Hour Act, or the Mine Safety and Health Act.
- See, https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_95/Article_21.html.

How is a REDA complaint filed?

- The complainant should call the Employment Discrimination Bureau Information Officer and inquire about his or her situation.
- If appropriate, a complaint form and instructional information is mailed to the complainant.
- The complaint must be in writing and signed by the complainant.

- The completed and signed complaint must be filed with the Retaliatory Employment Discrimination Bureau within 180 days of the date of the last retaliatory or discriminatory act.
- See, <https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#how-is-a-reda-complaint-filed?>

What happens after a REDA complaint is filed with the N.C. Department of Labor?

- A copy of the complaint is sent to the respondent;
- The file is assigned to a discrimination investigator;
- The respondent is contacted for facts, documents and statements;
- The complainant is contacted for facts, documents and statements;
- Other parties/ witnesses may be contacted for information or documents;
- A determination is made based on the evidence obtained;
- If the respondent fails to provide information, a determination may be made based on the available evidence in the file; if the complainant does not cooperate with the investigation, the complaint will be dismissed.
- See, [https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-happens-when-it-is-determined-that-there-is-no-violation-of-reda-\[a-'no-merit'-finding\]?](https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-happens-when-it-is-determined-that-there-is-no-violation-of-reda-[a-'no-merit'-finding]?)

What happens when it is determined that there is no violation of REDA [a "No Merit" finding]?

- Both the complainant and respondent are advised that the allegation of retaliation or discrimination could not be proven;
- The complainant is given a Right-to-Sue letter which permits the complainant to file a civil lawsuit. The lawsuit must be filed within 90 days of the date of the Right-to-Sue letter.
- See, [https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-happens-when-it-is-determined-that-there-is-no-violation-of-reda-\[a-'no-merit'-finding\]?](https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-happens-when-it-is-determined-that-there-is-no-violation-of-reda-[a-'no-merit'-finding]?)

What happens when it is determined that there is a violation of REDA [a "Merit" finding]?

- The Department of Labor will attempt to eliminate the alleged violation by informal methods which may consist of conference, conciliation and persuasion. If this effort fails, either:
- The Commissioner of Labor may file a civil action in Superior Court on behalf of the complainant; or
- The complainant may be given a Right-to-Sue letter that permits the complainant to file a civil lawsuit in Superior Court. The lawsuit must be filed within 90 days of the date of the Right-to-Sue letter.
- See, [https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-happens-when-it-is-determined-that-there-is-no-violation-of-reda-\[a-'no-merit'-finding\]?](https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-happens-when-it-is-determined-that-there-is-no-violation-of-reda-[a-'no-merit'-finding]?)

What remedies are available under REDA?

- What remedies are available under REDA?
 - An injunction to stop the continuing violation of REDA.
 - Reinstatement of the complainant to the same position held before the retaliatory action or discrimination or to an equivalent position.
 - Reinstatement of full fringe benefits and seniority rights.
 - Compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.
- See, <https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#what-remedies-are-available-under-reda?>.

In addition to the above, what may a Court award/impose?

- If a Court finds there was a willful violation of REDA, the Court can triple the amount awarded from compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.
- Assess the respondent costs and expenses including attorneys' fees for bringing the action.
- See, <https://www.labor.nc.gov/workplace-rights/retaliatory-employment-discrimination/retaliatory-employment-discrimination-bureau#in-addition-to-the-above,-what-may-a-court-award-/-impose?>.

Unemployment Benefits FAQs

When should I file a claim for unemployment insurance ("UI") benefits?

- You should file a claim for benefits if you have become unemployed through no fault of your own, you are willing to register for work and actively seek employment, and you are able and available to work if any work is offered to you. See, N.C. Gen. Stat. § 96-14.1; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.1.pdf.

How do you make a valid claim?

To obtain benefits, an individual must file a valid claim for unemployment benefits, register for work, and have a weekly benefit amount calculated pursuant to N.C. Gen. Stat. § 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). See, N.C. Gen. Stat. § 96-14.1; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.1.pdf.

How do I file a claim for unemployment insurance benefits?

- The fastest and most efficient way to file a new claim is to file online, <https://desncc.com/DESHome/Home>. If you don't have access to a computer, you may file over the phone by calling 1-877-841-9617. Either method is available 24 hours a day, seven days a week.

What is a base period, alternative base period, benefit year, average weekly insured wage, and wages?

- Refer to the definition section on page 1 of the document.
- See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_96.pdf.

What is a waiting period week?

- Your waiting period week is the first eligible week for benefits under each claim filed. You must serve a waiting period week for each claim filed.
- See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_96.pdf.

In which state should I file a claim if I live in North Carolina or another state?

- You should apply for benefits in the state where your base period wages were reported. If you have base period wages in multiple states, you may choose the state in which you file for benefits.

What if you filed a claim with another state?

- You may register with North Carolina by phone or on the DWS website.
- See, <http://www.nccommerce.com/workforce>.

What if I worked part-time?

- If you work part-time, you must report the gross (before taxes) earnings for the weeks that you worked, and you must maintain your eligibility requirements. If your only employment was part-time and you have been separated, you may be eligible to receive benefits. Contact a Department of Commerce, Division of Employment Security (“DES”) claims representative at 1-888-737-0259 so that a determination can be made.

Eligibility requirement to qualify for a subsequent benefit year?

1. You must have been paid wages in at least two quarters of your base period.
2. You must have been paid wages totaling at least six times the average weekly insured wage during your base period. If there are not enough base period wages, then your wage standard is determined using the last four completed calendar quarters immediately before the first day of your benefit year. This alternative base period may not be used to make a claim for benefits in the next benefit year.

You must have worked and earned six times your weekly benefit amount since the beginning of your prior claim. See, N.C. Gen. Stat. § 96 - 14.1 (b); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.1.pdf

What is a separation payment?

- Separation payment is any payment that was made, is being made, or will be made to you as a result of separation from last employment.

- See, <https://www.labor.nc.gov/workplace-rights/employee-rights-regarding-time-worked-and-wages-earned/payment-final-wages>.

Duration of the benefits in North Carolina?

- Depends on the seasonal adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed.
- The most recent seasonal adjusted unemployment rate can be determined by the rate in the following link: https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.3.pdf.

What is the maximum weekly benefit amount that I can receive?

\$350. See, N.C. Gen. Stat.96-14.2 (a); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.2.pdf.

You can check your eligibility via this website: <https://eligibility.com/unemployment/north-carolina-nc>.

Am I eligible for unemployment benefits during a leave of absence from my job?

- Generally, no. You must be unemployed through no fault of your own, be actively seeking work, and be able to accept work if offered. Also, if you're out of work due to a strike, you are not eligible for the same reason.
- See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.1.pdf.

Can I file for unemployment benefits I am not a US citizen?

- If you are not a citizen or national of the United States, you must have legal authority to work in the U.S.

What if I am out of work by failing to maintain a license?

- You are disqualified from receiving UI benefits. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.7.pdf.

What is NCWorks Online?

- NCWorks Online is a one-stop online resource for job seekers and employers in North Carolina. Job seekers can search for jobs, create resumes, and find education and training. Employers can find candidates, post jobs, and search labor market information. According to North Carolina law and Federal law, UI claimants must be registered for work. This registration must be accomplished by going to www.NCWorks.gov.

What is an attached claim?

- An employer may file claims for employees through the use of automation in the case of partial unemployment. An employer may file an attached claim for an employee only once

during a benefit year, and the period of partial unemployment for which the claim is filed may not exceed six weeks. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-15.pdf.

How is an attached claim filed?

- To file an attached claim, an employer must pay DES an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. DES must credit the amounts paid to the Unemployment Insurance Fund. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-15.pdf.

Income Tax Withholding?

- An individual may elect to have federal income tax deducted and withheld from the individual's unemployment benefits in the amount specified in section 3402 of the Code. An individual may elect to have State income tax deducted and withheld from the individual's unemployment benefits in an amount determined by the individual. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.2.pdf.

Do reduced work hours or wages give me good cause to quit work and still draw benefits?

- When you leave work due solely to a unilateral and permanent reduction in work hours of more than fifty percent (50%) of the customary scheduled full-time work hours, the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on your part. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.5.pdf.
- When you leave work due solely to a unilateral and permanent reduction in your rate of pay of more than fifteen percent (15%), the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on your part. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.5.pdf.

Are there other reasons that give me good cause to quit work and still draw benefits?

- Yes.
- Military spouse relocation. Leaving work to accompany your spouse to a new place of residence because the spouse has been reassigned from one military assignment to another.
- Domestic violence. Leaving work for reasons of domestic violence if you reasonably believe that your continued employment would jeopardize your safety or of any member of your immediate family.
- See, https://www.ncleg.net/EnactedLegislation/Statutes/_PDF/BySection/Chapter_96/GS_96-14.8.pdf.

What is misconduct that disqualifies me from receiving UI benefits?

- Conduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee.
- Conduct evincing carelessness or negligence of such degree or recurrence as to manifest an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.
- Check this link for examples: https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-14.6.pdf.

Unemployment Hearings FAQs

What is the lower authority for appeal hearings?

- The Appeals Section of DES is the lower authority for appeal hearings. Appeals referees within the Appeals Section conduct evidentiary hearings and issue written decisions in contested cases. The Chief Appeals Referee manages the appeals referees and support staff in the Appeals Section.

What is an appeal?

- An appeal is a written statement contesting or challenging a determination, decision or opinion issued by an adjudicator, appeals referee, hearing officer, the Assistant Secretary for DES or the Board of Review. You do not need to use any special form in order to file an appeal.

Where and how may I file an appeal?

- Determinations are made in different work units of DES, depending on the issue. Each determination has an address and instructions for filing an appeal. You must file your appeal at the address and according to the instructions included in the determination (by mail, fax, or email). See, 04 NCAC 24C.0202.

Will I have to repay benefits if an appeal is not in my favor?

- In some cases, yes. For claims filed June 30, 2013 and after, claimants are subject to repayment of benefits received from any administrative or judicial decision that is later reversed on appeal.

Who can file an appeal?

- Any claimant or employer who receives an unfavorable determination or ruling may appeal and request a hearing.

Who are the parties to a hearing?

- Typically, the parties to a hearing are the claimant who filed a claim for UI benefits, the employer for whom the claimant last worked before filing the claim and DES. Any former employer of the claimant could potentially be a party to the hearing.

What should I say in my appeal statement?

- An appeal must be written. You may write your appeal as a letter. No special form is necessary to file a written appeal. You must state your desire to appeal, and the specific reasons why you disagree with the determination or decision. You must include the name of each party, docket or decision number that you are appealing, and the last four digits of the claimant's social security number. The appeal must also be signed and dated. If you are the employer, you should also include the name of your business and the name and title of the individual filing the appeal on your behalf.

What happens after I file an appeal?

- Usually, a telephone hearing will be scheduled. In some cases, an in-person hearing will be scheduled because a party requests it, or the complexity of the case requires it. All parties involved in the determination will be notified of the hearing date and time and have an opportunity to participate in the hearing.

Who conducts the hearing?

- Hearings are conducted by hearing officials within DES or the Board of Review.

Who is a hearing official?

- Hearing officials are individuals authorized to conduct hearings and/or issue decisions pursuant to the Employment Security Law. They may be appeals referees, hearing officers, attorneys on DES's legal staff, the DES Assistant Secretary or the Board of Review.

What happens at the hearing?

- An appeals hearing is an administrative evidentiary hearing where interested parties to the appeal can present testimony and evidence. The hearing official conducting the hearing will give the parties instructions on how to participate.

How will I know the date, time and place of the hearing?

- A hearing notice is mailed to each party with the date, time and format of the appeals hearing. The notice also provides the name of the hearing official who will conduct the hearing and the issues that will be addressed.

Where are hearings held?

- Hearings are generally held by telephone conference call and/or in-person at some Division of Workforce Solutions (“DWS”) public employment offices around the state. For a current listing of DWS offices where hearings are conducted, you may contact the Appeals Section

at 919-707- 1060, by fax at 919-733-1228, or by email atdes.public.appeals@nccommerce.com.

When will the hearing be held?

- The hearing will be scheduled as quickly as possible, and will typically be held within a few weeks from the date the appeal is filed. Hearings are scheduled during normal business hours Monday through Friday.

Do I need legal representation in an administrative hearing?

- You may, but are not required to have legal representation in administrative hearings. Claimants or employers may file their own appeals and represent themselves (pro se) throughout the administrative appeal process, or have a legal representative represent them. Legal representatives should be obtained before the hearing. See, 04 NCAC 24C.0301.

What can a legal representative do in an administrative proceeding?

- A legal representative may obtain information about a party's case, present evidence on behalf of the party, present opening statements and closing arguments, make requests or motions, and give any notice about the administrative proceedings.

Where can I find a lawyer?

- For help finding a lawyer, you may call the North Carolina Lawyer Referral Service at 1-800- 662-7660, or the Legal Aid of North Carolina office toll free at 1-866-369-6923. You may also check your local telephone directory.

What rights do I have at an appeals hearing?

- You must be given a reasonable opportunity for a fair hearing before an impartial hearing official. The hearing must be conducted informally and in a manner that preserves the substantial rights of each party.

How can I file an appeal to adjudicator's determination?

- You may file a written appeal from a determination at the address included in the determination by mail, fax or email.

What is the deadline for filing an appeal to a determination?

- The determination will tell you the deadline for filing your appeal. The date listed in the document that you are appealing is controlling. If the last day of the appeal period falls on a weekend or a legal state holiday, the appeal period is automatically extended to the next working day. If your appeal is not filed by the required deadline, it may be denied.

What should I do to prepare for the hearing?

- Gather all documents that support your case. Make enough copies to give to the other parties and the hearing official during an in-person hearing. If the hearing is held by telephone, you must mail copies of your documents to the hearing official and the other parties in sufficient time for them to be received before the hearing date. If you do not provide copies to the other party and the hearing official, your documents may be rejected. Choose your witnesses and arrange for them to be available to participate in the hearing. For telephone hearings, provide the names and telephone numbers of your witnesses to the hearing official prior to the hearing. Review all documents that were sent to you with the case file so that you are familiar with what the other party has said about your case. This will help you decide what witnesses you need to participate in the hearing. For in-person hearings, the case file may be reviewed immediately before the hearing. You may also contact the hearing official and arrange a date and time to review the file.

If I do not appear at the hearing, what will happen?

- If you appealed the determination, no hearing will be held and your appeal will be dismissed. If you are not the appealing party and you do not appear, the hearing will be held without you. The hearing official will make a decision based solely on the evidence presented during the hearing.
- NOTE: The appealing party will not automatically win the case if the non-appealing party fails to appear for the hearing.

Who should I bring to the hearing?

- Witnesses with personal knowledge about the events and information relating to your case are the best witnesses. A witness who can only testify about what others (who are not at the hearing) told him or her, usually presents what is called hearsay evidence. Although hearsay evidence is admissible in certain circumstances, it usually cannot be the sole basis for findings of fact.
- If I cannot appear at the hearing as scheduled, can I get the date and/or time changed? Yes. To reschedule a hearing, you must contact the hearing official and state the specific reasons for the request. The request will either be granted or denied. If there is no response to the request by the hearing date, each party must be prepared to go forward with the hearing.

How can I arrange for witnesses?

- Contact and ask the witness to testify. The best witness is one who was present and has personal knowledge of the facts. A witness who was present at an event is much better than one who was told about it by someone else. If possible, each party and their witnesses should be at the same location for the hearing. If a witness cannot be at the same location and must be contacted at a different telephone number, provide the witness's name and telephone number to the hearing official whose name and telephone number appear on the Notice of Hearing. Instruct the witness to be available at the scheduled hearing time and to remain available until dismissed by the hearing official. The hearing official cannot call your witnesses before or after the hearing. The hearing official can only contact your

witnesses during the hearing, when all parties can hear what the witness has to say and have a chance to ask questions about the testimony.

- If a witness refuses to participate voluntarily in the hearing, or supply documents that I have asked for, how can he or she be made to comply?
- You should contact the hearing official listed in your hearing notice or the Appeals Section and request that the witness be subpoenaed. Make the request as soon as possible, so the subpoena can be served before the hearing. Legal representatives may issue subpoenas at their own expense and discretion.

What is a subpoena?

- A subpoena is a command to appear at a certain time and place to give testimony. A subpoena *duces tecum* requires production of documents, books or other items.

What should I put in my request for a subpoena?

- Your request must be in writing and must include the:
 - name of the party requesting the subpoena;
 - claimant's name;
 - docket number of the case;
 - name, address and telephone number of the person you want to appear for the hearing;
 - specific identification of anything sought, including a detailed description and where the item is presently located, including the name and address of the person in possession; and
 - statement of why the testimony or evidence to be subpoenaed is important to the case.

Can my request for a subpoena be denied?

- Yes. Your subpoena request may be denied for several reasons including that the request is itself objectionable or unreasonable, evidence requested is not relevant to the issues in your case, or there is insufficient information in the request to determine exactly what documents or evidence is needed for the hearing.

How do I know what is in the case file for the hearing?

- Usually for telephone hearings, a copy of all appeals case file documents is mailed to you before the hearing. For in-person hearings, you will have an opportunity to review the case file documents immediately before the hearing. If you need to review the case file documents for an in-person hearing prior to the hearing, you must contact the hearing official scheduled to conduct your hearing and arrange a date and time to review the documents in advance.

Can I send information to the hearing official before the hearing?

- Yes. Any information you send to the hearing official should also be sent to all other parties to the hearing. The hearing official can only consider documents and evidence that are provided to all parties prior to the hearing.

Can I talk to the hearing official before the hearing?

- The hearing official can only discuss procedural matters like scheduling and subpoena requests prior to or after the hearing. Questions about the subject matter of your case can only be discussed when all parties are present during the hearing.

If I appeal, may I later withdraw my appeal?

- Yes. Before a decision is issued on your appeal, you may withdraw your appeal by submitting a written request to do so to the hearing official. You must include the same identifying information that was included in your appeal, as well as the appeals docket number, if known. You may also orally withdraw your appeal at the hearing. You must state that the withdrawal is freely done. Only the party that filed the appeal may withdraw the appeal. If the request is granted, a decision will be issued dismissing your appeal and stating that the previous determination or decision will become final. There are no appeal rights to an order that results from a withdrawal.

If my determination covers a matter for which a hearing will be held and I have questions, who may I contact?

- You should use the contact telephone number, email address or fax number provided in the hearing notice that you received. If you are unable to reach someone at that number, contact:

Appeals Section

Division of Employment Security Post Office Box 25903

Raleigh, N.C. 27611-5903

Telephone No.: 919-707-1060

Fax No.: 919-733-1228

E-Mail Address: des.public.appeals@nccommerce.com

- Be sure to give enough information about your determination and case for your call or written inquiry to be forwarded to an individual who can quickly answer your questions.

Where can I get a copy of the Employment Security Law and DES Rules?

- The Employment Security Law is found in Chapter 96 of the North Carolina General Statutes and Title 4, Subchapter 24 of the North Carolina Administrative Code. You can

access the governing law at DES's website, the General Assembly's website, or the Administrative Office of the Courts' website.

How will the hearing be conducted?

- The hearing will be recorded. The hearing official will explain the hearing issues, the purpose of the hearing, and how the hearing will proceed. Each party will be allowed to testify, have its witnesses testify, offer documents or recordings as evidence, and review and ask questions about any documents the other party may offer. Each party and its witnesses may be questioned by the other party and the hearing official. If it is determined that assistance is needed, the hearing official may help a party who does not have legal representation frame its questions for the witnesses and the other party. Each party will have a final opportunity to give a summary of its case after each side has presented its case. Each party and its witnesses must appear at the hearing to present all testimony and other evidence because it will be the only chance for them to present testimony and evidence. After the hearing, the hearing official will issue a written decision. No party or witness may discuss the case with the hearing official after the hearing is over.

Should I show or play a video or audio recording that is important to my case?

- Yes, especially if it is the sole basis for the testimony being presented. You must make arrangements with the hearing official in advance to ensure that your video or recording can be viewed or heard during the hearing. For in-person hearings, you are responsible for making sure that the necessary equipment is present to allow the video or audio recording to be played during the hearing. The recording must be made a part of the record for the hearing official to consider it as evidence, so be sure to bring it in a format that can be kept by the hearing official (e.g., a CD-R disc, flash drive, videocassette, etc.). If you have a video or audio recording that will only be meaningful if viewed in-person, you should consider requesting in advance that the hearing official conduct your hearing at an in-person location.

How long will my hearing last?

- Hearings are typically scheduled for one hour, but additional time may be allowed for cases with multiple participants or complex issues. If your hearing requires more than the scheduled time, the hearing may be adjourned and completed at a later date and time. If you know that you will bring multiple witnesses or a large number of documents to the hearing, you may request that additional time be allowed for your hearing.

Is it important to be on time for my hearing?

- Yes. You should make every effort to be on time for your hearing. For telephone hearings, make sure that your telephone is working, and the line is open and available for incoming calls. The hearing official will call you within 15 minutes from the scheduled start time. For in-person hearings, you should arrive at least 15 minutes before the start time of the hearing.

What happens if I am late for the hearing?

- If you are late for a telephone hearing, you may not be able to join the hearing after the hearing official begins. If the hearing official is unable to reach the appealing party by phone within 15 minutes from the start time of hearing, the appeal may be dismissed. If a non-appealing party is not available at the scheduled phone hearing, the phone hearing may begin without it. If an appealing party is 15 or more minutes late for an in-person hearing, the hearing official may dismiss the appeal and allow the other participants to leave. If you are late for your hearing and are unable to participate, you may have to appeal the hearing official's decision and request a new hearing.

How do I give evidence at a hearing?

- Sworn testimony is required. If you want witnesses to testify, they must do so at the hearing. If you have documents, electronic recordings or other evidence that you want considered by the hearing official, you must mail or deliver them to the hearing official and to each party. The evidence must be received before the hearing.

What evidence should I provide?

- The best evidence is testimony from a person who was present at an event and can answer specific questions about what happened. Hearsay evidence may support a finding of fact if it meets the statutory requirements set forth in N.C. Gen. Stat. § 8C, Article 8. If the hearsay evidence does not meet the statutory requirements, then the evidence may qualify as an exception under the hearsay rules found in N.C. Gen. Stat. § 8C, Rules 803 and 804.
- If the testimony is based on a video or audio recording, the recording should be offered into evidence during the hearing.
- To have documents or electronic recordings considered, mail, fax, or deliver a copy of each to the hearing official and each party, before the hearing date. Do this even if you previously submitted the evidence to DES. Only the documents and recordings in the hearing file will be considered, unless the right to view them is waived.
- Often, documents and affidavits are hearsay and not enough to prove what happened. An employer who must rely on business records should provide a witness who can testify about how the records were prepared and vouch for their authenticity. Unless it meets the statutory requirement set forth in N.C. Gen. Stat. § 8C, Article 9, or qualifies as an exception to the hearsay rule, the evidence cannot be used as the sole basis for a finding of fact. Once the hearing is closed, no additional evidence will be accepted.

What if separation from work was drug and/or alcohol related?

- There must be evidence to prove or disprove any test and its results. Evidence should also include work rules and/or policies. The CSERA; specifically, N.C. Gen. Stat. 95 §§ 230-235, requires that tests comply with its procedural requirements, unless the test was administered by the U.S. Department of Transportation or Nuclear Regulatory Commission. Instead of live testimony from a laboratory representative at a contested claims hearing, an affidavit from the lab's authorized representative may be presented to prove controlled

substance examination results, chain of custody and/or compliance with all testing and retesting required by federal or state law. Test results may be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit. Any documents submitted to the hearing official must also be provided to the other party before the hearing.

What is a continuance?

- A continuance is a rescheduling of a proceeding for a specified period of time. A continuance may be referenced as a postponement or an adjournment.

What is an adjournment?

- An adjournment is a temporary suspension of a hearing that is already in progress until a later time.

When would a case be adjourned?

- An adjournment may be directed or granted in the discretion of the hearing official, and only for good cause.

What happens after I have a hearing?

- The hearing official or other authorized individual will issue a decision or order pursuant to the Employment Security Law. If the appealing party does not appear at the hearing, an order dismissing the appeal will be issued. If testimony and other evidence are taken from the parties and witnesses, the decision will address the issues that were included in the hearing notice and any additional issues that were properly raised and discussed during the hearing.

What happens if I missed the hearing?

- You may appeal the decision or order if you missed the hearing. You may request a new hearing and state the reason why you believe that you should be given a new hearing.

If a case was adjourned, how long will it take for the case to be rescheduled?

- An adjourned hearing will be rescheduled as quickly as possible. Due to conflicts with other hearings, it may take several weeks for your hearing to resume.

How long does it take for a case to be rescheduled if a request to reopen the case is granted?

- A rescheduled hearing will be scheduled as quickly as possible. Due to conflicts with other hearings, it may take several weeks for a new hearing date to be scheduled.

After a hearing is held, how long will it take for me to get a decision?

- Decisions are mailed to the parties as soon as possible after the hearing. The hearing official will tell you when you should expect a decision.

What is the decision based on?

- The decision will be based on the testimony and evidence given during the appeals hearing. That includes documents and/or recordings that were properly submitted by the parties as evidence, and documents that were used by DES for the initial determination. If you fail to appear for the hearing, documents that you submitted as evidence may not be considered.

Can I get a copy of the electronic recording of the hearing or a transcript of the hearing?

- Yes. If an appeal was filed in your case, you can contact the Appeals Section to request a free copy of the hearing recording. Transcripts of the hearing are only available in certain circumstances, and you may be required to pay a fee for the transcript.

Should I continue to claim benefits until all appeals have been decided?

- Yes. As long as you are unemployed, you should continue to file your weekly claim until all appeals have been decided. Benefits will not be paid for weeks not claimed. NOTE: For claims filed June 30, 2013 and after, claimants are subject to repayment of benefits received from any administrative or judicial decision that is later reversed on appeal.

If I win at the hearing, how long will it take to get my benefits?

- If UI benefits are awarded as a result of an Appeals Decision, benefits will usually be released the night the decision is mailed to the parties.

If I win at the hearing, but my employer appeals, what happens?

- You will be notified that a further appeal has been filed. An acknowledgment letter will be mailed to you. The acknowledgment letter will notify you of your rights and further steps in the appeals process. NOTE: For claims filed June 30, 2013, and after, claimants are subject to repayment of benefits received from any administrative or judicial decision that is later reversed on appeal.

What can I do if I disagree with the decision after my hearing?

- In most cases, you can file an appeal of the decision. The decision will include instructions for filing an appeal and the deadline for doing so.

What is the appeals process?

- When information provided by a claimant or employer indicates that the claimant's separation was due to some reason other than lack of work or an inability to perform the work for which the claimant was hired, the claim must be referred for adjudication. Adjudication is an informal investigation during which an adjudicator contacts the claimant, employer and any other person to get information about a specific issue or question. After obtaining information about the reason for separation from both the claimant and the last employer, DES issues a nonmonetary determination that either allows or denies benefits. A copy of this determination is mailed to all interested parties.

Appeals

- Generally, there are two levels of administrative appeals after an initial determination has been issued. After administrative appeals are exhausted, judicial review may be sought. The first level administrative appeal is known as the lower authority appeal. Appeals from initial determinations are conducted by lower authority appeal hearing officials. Lower authority appeals are filed with the Appeals Section of DES. Lower authority appeals hearings are conducted by appeals referees within the Appeals Section. The determination being appealed contains information on how and where to file an appeal. The second level of appeal is known as higher authority review. Appeals from the lower authority decisions are reviewed by the Assistant Secretary for DES, the Board of Review, or their designees. The decision being appealed contains information on how and where to file an appeal.

For appealing an initial decision, refer to the following link:

- <https://des.nc.gov/PortalCommon/Content/downloads/NCESC568E.pdf>

For appealing an appeals decision, refer to the following link:

- <https://des.nc.gov/PortalCommon/Content/downloads/NCESC569E.pdf>

Unemployment Overpayments and Repayments FAQs

What is an overpayment?

- An overpayment occurs when an individual receives more UI benefits than they were entitled to receive.

What types of overpayments exist?

- Two types of UI overpayments exist: fraudulent and non-fraudulent. A fraudulent overpayment occurs when you knowingly provide false or misleading information to DES in order to receive benefits.
- A non-fraudulent overpayment occurs when you are at fault for an overpayment, but it was determined that there was no intent to falsify information. See, § 96-18.1(a); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-18.1.pdf.

Do I need to repay if my claim is reversed on appeal?

- When a claimant receiving benefits has his/her claim, reversed on appeal, the benefits received will be an overpayment subject to repayment to the Division. The Law requires all persons who have received benefits to which they are not entitled "for any reason" to be liable to repay the benefits received, including when decisions at any Division or judicial level have been reversed on appeal. See, N.C. Gen. Stat. § 96-18(g)(2); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-18.1.pdf.

How do I repay an overpayment?

- All overpayments must be repaid to DES. If you wish to avoid a tax offset, you can establish a repayment agreement with a DES recovery specialist by calling 919-707-1338. You also have the ability to pay your overpayment online by logging into Claimant Self Service from the DES home page.

What if I disagree with the overpayment determination?

- You may file a written appeal of an overpayment determination. You have thirty (30) days from the date the overpayment determination is mailed to file an appeal. See, N.C. Gen. Stat. § 6-18(d); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-18.1.pdf.

Wage and Hours FAQs

Does an employer have to give all of its employees rest breaks, meal breaks or smoke breaks?

- No. A rest break (generally 10 or 15 minutes) and a meal break (usually 30 minutes or more) are not required by law for anyone who is 16 years of age or older. A 30-minute break after 5 hours is required for youths who are 14 or 15 years of age. See, N.C. Gen. Stat. § § 95-25.5(e); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.

Is there a restriction on how many hours an employer can work an adult employee?

- No.

Can an employer pay someone a salary and not have to worry about overtime pay?

- No, not in all cases. Just putting an employee on a salary does not necessarily exempt that employee from overtime pay. The employee still has to meet certain tests to be exempt as a manager, supervisor, administrative employee, professional employee, or as an outside salesperson. See, N.C. Gen. Stat. § 95-25.14; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.

Overtime pay?

- Every employer shall pay each employee who works longer than 40 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 40 per week. Employers can't give comp time in lieu of paying this rate. See, N.C. Gen. Stat. § 95-25.4; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.

Can my employer require that I work overtime?

- Yes, the employer can make the working of overtime as a condition of your employment.

What if I work on a holiday or on the weekend?

- Unless your employer has promised to pay you extra for working on a holiday or on the weekend, your employer only has to pay you for the total hours you actually worked in the workweek regardless of what day or days you worked. So, the overtime pay does not apply unless you worked over 40 hours in a workweek. See, N.C. Gen. Stat. § 95-25.4; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2_A.pdf.

Do employers have to observe certain legal holidays, pay me for jury duty, allow opportunities to make up time not worked due to bad weather, or provide vacation time off with pay?

- No. See, N.C. Gen. Stat. § 95-25.12.

Is there a certain amount of time someone has to work before they are considered a permanent full-time employee?

- No.

Payment to separated employees?

- Your employer has to pay you on or before the next regular payday for the pay period in which you worked when your separation takes place. See, N.C. Gen. Stat. § 95-25.7; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2_A.pdf.

Employer duties of notification for changes in promised wages?

- Refer to N.C. Gen. Stat. § 95-25.13; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.

Wage payment?

- Every employer shall pay every employee all wages and tips accruing to the employee on the regular payday. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly. Wages based upon bonuses, commissions, or other forms of calculation may be paid as infrequently as annually if prescribed in advance. See, N.C. Gen. Stat. § 95-25.6; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2_A.pdf.

Can my employer withhold my wages?

- Pursuant to certain conditions in N.C. Gen. Stat. § 95-25.8, your employer can withhold your wages. See, https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.

Must I be paid for time spent in meetings, training, attending a class, or a workshop?

- Yes, unless all four of the following criteria are met: (1) it occurs outside your normal scheduled hours of work; (2) it is completely voluntary; (3) it is not job-related (unless you

attend an independent school or college on your own initiative outside work hours); and, (4) no other work is performed during the period. See, N.C. Gen. Stat. § 95-147.

Youth Employment FAQs

Youth employment rules for all youths under 18?

- Employment certificates are required. Hazardous, detrimental and prohibited work is not permitted. See, N.C. Gen. Stat. § 95-25.5; https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.

Additional rules for 16- and 17-year-olds include:

- No work between 11 p.m. and 5 a.m. when there is school the next day. Exception: when the employer gets written permission from the youth's parents and principal.

Additional rules for 14- and 15-year-olds include:

- Work can be performed at retail businesses, food service establishments, service stations and offices of other businesses. Work is not permitted in manufacturing or mining, on construction sites, with power-driven machinery, or on the premises of a business holding an ABC permit for the on-premises sale and consumption of alcoholic beverages.
- Maximum hours per day: three on school days; eight if a non-school day. Maximum hours per week: 18 when school is in session; 40 when school is not in session.
- Hours of the day: May work only between 7 a.m. and 7 p.m. (except to 9 p.m. during the summer).
- Breaks: 30-minute breaks are required after any period of five consecutive hours of work.
- See, N.C. Gen. Stat. § 95-25.5 (c); https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_95/Article_2A.pdf.