



SPONSOR: Rep. Osienski & Rep. K. Williams & Rep. Dorsey Walker  
& Sen. Walsh & Sen. Townsend  
Reps. Briggs King, Heffernan, Morrison; Sens. Gay,  
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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 176

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO UNEMPLOYMENT COMPENSATION DEADLINES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3304, Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3304. Day of filing; computation of time.

When any notice, report or other document is required to be filed under this chapter and the same is forwarded by mail to the Department, the day of mailing shall be deemed to be the day of filing.

When the day, or the last day, for doing any act required to be done falls on Saturday, Sunday or a holiday, the act may be done on the first ensuing day that is not a Saturday, Sunday or holiday.

Unless otherwise specified, all references to days in this chapter shall mean calendar days.

Section 2. Amend § 3317(b), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3317. Filing of claim for benefit; regulations of Department; posting [For application of this section, see 79 Del. Laws, c. 82, § 2].

(b) Whenever an individual files a claim for benefits, the Department shall forward to the employer by whom the claimant was most recently employed, hereafter the "last employer," or to the last employer's agent and to each base period employer or to each base period employer's agent relating to the individual's claim a separation notice. The last and base period employer(s) or agent(s) of the last and base period employer(s) shall return such notices completed, indicating the reason for the claimant's separation from work with them and the individual claimant's last date of work with them, within 7 15 days of the date contained on the separation notice. Any last or base period employer or any last or base period employer's agent who fails to timely return a separation notice or who fails to complete a separation notice or responds inadequately (which, for the purposes of this subsection, shall mean providing the Department insufficient information to make a determination of eligibility for the receipt of unemployment insurance benefits) within the period prescribed above shall be barred from claiming subsequently that the individual claimant to whom such separation notice applied shall be

disqualified under any provisions of § 3314 of this title and shall be barred from seeking relief from benefit wage charges to its experience merit rating account under §§ 3349-3356 of this title unless the Department for reasons found to constitute good cause, shall release such employer or the employer's agent from the default. If the last or base period employer or the last or base period employer's agent fails to timely submit a completed separation notice, the Department shall not be required to issue a determination on said claim or to make an examination of said claim or be required to follow the remaining procedures as set forth in §§ 3318-3320 of this title.

Section 3. Amend § 3318, Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3318. Decision on claim by deputy; notice; appeal.

(a) If the last employer timely files a completed separation notice in accordance with § 3317 of this title and the employer's statement on the separation notice does raise a potentially disqualifying issue as to the reason for the claimant's separation, the claim shall be referred to a representative of the Department, hereinafter referred to as a Claims Deputy, who shall examine the claim and on the basis of the facts found by the Claims Deputy shall initially determine the individual's qualification and nonmonetary eligibility for benefits, and issue a determination in which it is determined whether or not such claim is valid. If valid, the Claims Deputy shall further determine the week with respect to which benefits shall commence. In lieu of making a determination, the Claims Deputy may elect to refer such claim or any question involved therein to an appeal tribunal which shall make its decision with respect thereto in accordance with the procedure described in subsection (c) of this section. In either case, the Claims Deputy shall promptly notify the claimant and the last employer of the Deputy's own determination and the reasons therefor. The Claims Deputy may for good cause reconsider a determination and shall promptly notify the claimant and the last employer of the Deputy's amended determination and the reasons therefor, as the case may be. Base period employers who have submitted timely and completed separation notices in accordance with § 3317 of this title may seek relief from benefit wages charged to their experience merit rating accounts in accordance with § 3355 of this title except that for a claim in which the last employer is also a base period employer for such claim, the issue of benefit wage charge relief or such base period employer shall be determined in accordance with the determination on the issue of the claimant's last separation from such employer.

(b) Unless a claimant or a last employer who has submitted a timely and completed separation notice in accordance with § 3317 of this title files an appeal within ~~40~~ 15 calendar days after such Claims Deputy's determination was mailed to the claimant's and last employer's last known addresses or otherwise delivered by the Department to the claimant and the last employer, the Claims Deputy's determination shall be final and benefits shall be paid or denied in accordance therewith. If a Claims Deputy's determination awards benefits, such benefits shall be paid promptly in accordance with such determination upon its issuance. If an appeal is filed from a Claims Deputy's determination that

awards benefits, benefits shall be paid in accordance with such determination notwithstanding such appeal, but if the appeals tribunal's determination or a determination of the Unemployment Insurance Appeal Board under §§ 3320 through 3322 of this title, or judicial review under § 3323 of this title, modifies or reverses the award of the benefits, the claimant shall be paid benefits for the weeks of unemployment following the issuance of such an appeals tribunal, Unemployment Insurance Appeal Board or judicial review decision only in accordance with such decisions.

(c) Unless the appeal is withdrawn, an appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the decision of the deputy. The parties shall be duly notified of the tribunal's decision, together with its reason therefor, which shall be deemed to be final unless within 15 days after such tribunal's decision was mailed to the parties' last known addresses or otherwise delivered by the tribunal to the parties ~~the date of notification or mailing of such decision~~ further appeal is initiated pursuant to § 3320 of this title. If an appeals tribunal decision awards benefits, such benefits shall be paid promptly in accordance with such decision upon its issuance. If an appeal is filed from an appeals tribunal's decision that awards benefits, benefits shall be paid in accordance with such decision notwithstanding such appeal, but if the Unemployment Insurance Appeal Board's decision modifies or reverses the award of benefits, the claimant shall be paid benefits for weeks of unemployment following the issuance of the Unemployment Insurance Appeal Board's decision only in accordance with such decision. Benefits to which the claimant is not entitled under the decision of the appeals tribunal shall not be paid for any week ending after the decision is issued, but any benefits which the claimant is determined to be otherwise entitled to receive shall be paid notwithstanding any further appeal from the decision of the appeals tribunal.

Section 4. Amend § 3320(b), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3320. Review.

(b) On, or after, July 7, 2005, the UIAB shall schedule and hear any appeal of an Appeals Referee's decision where such appeal, although timely filed, was not scheduled and heard by the UIAB prior to December 31, 2004. Notwithstanding the ~~10-day~~ appeal period set forth in § 3318(c) of this title, until August 6, 2005, the Unemployment Insurance Appeal Board shall consider as timely, any appeal of an Appeals Referee decision that could not have been accepted after December 31, 2004, and prior to July 7, 2005.

Section 5. Amend § 3322(a), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3322. Finality of Board's decision; duty to exhaust administrative remedies; position of Department in judicial review.

(a) Any decision of the Unemployment Insurance Appeal Board shall become final ~~40~~ 15 days after the date of ~~notification or mailing or other delivery~~ thereof, and judicial review thereof as provided in this subchapter shall be permitted only after any party claiming to be aggrieved thereby has exhausted all administrative remedies as provided by this chapter.

Section 6. Amend § 3325(d), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3325. Recoupment of Overpayment of Benefits.

(d) The Department shall issue a notice of overpayment that includes the grounds for the overpayment, and an order for recoupment, before initiating action to collect the overpayment. Unless an individual files an appeal to an Unemployment Insurance appeals referee within ~~40~~ 15 days after the order for recoupment was mailed to the individual at the individual's last known address or otherwise delivered to the individual by the Department, the order for recoupment is final and recoupment shall be made in accordance with the order. An appeal from an Unemployment Insurance appeals referee decision to the Unemployment Insurance Appeal Board must be filed within ~~40~~ 15 days after such decision was mailed to the individual or otherwise delivered to the individual by the Department. An appeal from the Unemployment Insurance Appeal Board decision to Superior Court may be made in the same fashion as an appeal of the Unemployment Insurance Appeal Board's benefit decisions.

Section 7. Amend § 3344(c), Title 19 of the Delaware Code, by making insertions as shown by underline as follows:

§ 3344. Determination of liability of employer for assessments; administrative and judicial review; time limits.

(c) The Unemployment Insurance Appeal Board's decision shall be final and conclusive as to the liability of the employing unit unless, within ~~40~~ 15 days after mailing or other authorized delivery method thereof the complainant or the Department appeals to the Superior Court for the county in which the complainant resides. The Department may be represented in any such appeal by any qualified attorney employed by the Department and designated by it for that purpose or, at the Department's request, by the Attorney General. In every such appeal the cause shall be decided by the Court from the record, without the aid of a jury, and the Court may affirm, reverse or modify the Unemployment Insurance Appeal Board's decision. The Unemployment Insurance Appeal Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court shall remand the case to the Unemployment Insurance Appeal Board for completion of the record. If the Court finds that the Unemployment Insurance Appeal Board has made an error of law, the Court shall reverse or modify the Unemployment Insurance Appeal Board's decision and render an appropriate judgment.

SYNOPSIS

This bill would extend various deadlines in the Unemployment Code. The intent is to provide claimants and employers additional time to receive and prepare a response or appeal of benefit determinations and other important documents that require a response, in an effort to reduce the incidents of late filed appeals and missed deadlines. This would benefit claimants and employers by providing more time, while also reducing the administrative burden to the Division of Unemployment Insurance of responding to late appeals and late filed documents. This bill also makes conforming changes to additional sections of the Unemployment Code that provide for delivery by mail or other delivery methods to provide flexibility to the Division and Board if they decide to send notices and other documents by email or other delivery methods to reduce mailing expenses and increase efficiency. Finally, this bill confirms Superior Court precedent that Code references to “days” mean “calendar days” unless otherwise specified.