

Joseph D. Coletti
John Locke Foundation
4800 Six Forks Rd., Suite 220
Raleigh, NC 27609
Re: Proposed Rule 04 NCAC 24G.0104

July 23, 2020

Regina S. Adams
N.C. Department of Commerce
Division of Employment Security
Post Office Box 25903
Raleigh, NC 27611
Submitted electronically to des.rules@nccommerce.com

Dear Ms. Adams:

The Division of Employment Security (DES) has no authority to make the proposed [Rule 04 NCAC 24G.0104](#). DES claims flexibility it has not been granted under state law to enact rules that neither state law nor federal law gives it authority to enact.

In its Reason for Proposed Temporary action, DES states,

N.C. Session Law 2020-3 made changes to Chapter 96 of the North Carolina statutes. Part of the law, codified as N.C.G.S. 96-14.15, provides for flexibility to DES to administer the unemployment compensation to unemployed individuals in response to the coronavirus emergency.

But N.C.G.S. 96-14.15 has no provision for such flexibility and provides four specific circumstances under which “unemployment benefits are payable in response to the coronavirus emergency.” Those are [emphasis added]

1. An employer temporarily ceases operations due to the coronavirus, preventing the individual from going to work.
2. An employer reduces the hours of employment due to the coronavirus.
3. An individual has a current diagnosis of the coronavirus.
4. An individual is quarantined at the instruction of a health care provider or a local, State, or federal official.

Nowhere does [Session Law 2020-3](#) reference “suitable work.”

The FFCRA is [Public Law 116-127](#) not 116-27. Section D on unemployment makes no reference to “suitable work.” Its only provision for “flexibility” does not grant discretion to DES, but merely states that

if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID-19, such modifications shall be disregarded for the purposes of applying Section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.

The federal law thus grants no authority outside what is in State law to modify unemployment compensation, and, as we have established, Session Law 2020-3 is very definite in its modifications.

The proposed [Rule 04 NCAC 24G.0104](#) has no basis in state or federal law and should be withdrawn.

Sincerely,



Joseph D. Coletti