

This is an amendment to 11.3.100 NMAC, Sections 1, 7, 102, 106, 107 and 109, effective 10/29/2019.

11.3.100.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, [~~Employment Security Division~~], P.O. Box 1928, Albuquerque, NM 87103
[7-15-98; 11.3.100.1 NMAC - Rn & A, 11 NMAC 3.100.1, 01-01-2003; A, 11-15-2012, A, 10/29/2019]

11.3.100.7 DEFINITIONS: In addition to the definitions found in the individual parts and sections, the following definitions apply in Parts 100 through 500 of Title 11, Chapter 3:

~~[A.]~~ ~~“Bureau” means the unemployment insurance bureau of the employment security division of the New Mexico department of workforce solutions.~~

~~[B.]~~ A. “Claim” means a request for benefits pursuant to the Unemployment Compensation Law.

~~[C.]~~ B. “Contribution” means the state unemployment insurance tax imposed on employers pursuant to the Unemployment Compensation Law.

~~[D.]~~ C. “Department” means the New Mexico department of workforce solutions.

~~[E.]~~ D. “Division” means the unemployment insurance division of the New Mexico department of workforce solutions, formerly the employment security division [~~of the New Mexico department of workforce solutions~~], formerly known as the employment security commission and formerly known as the employment security department.

~~[F.]~~ E. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities.

~~[G.]~~ F. “Electronic form” means body of information collected by electronic means, computer program or other automated means similar to the body of information collected by a paper document.

~~[H.]~~ G. “E-mail” or “electronic mail” means communications similar to paper letters and memos transmitted electronically for the purpose of communication.

~~[I.]~~ H. “Electronic signature” means electronic symbols or process attached to or logically associated with a record, adopted and executed by an individual with the intent to sign the record or electronic form.

~~[J.]~~ I. “Good cause” means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason.

~~[K.]~~ J. “IVR” means the interactive voice response system used by the [~~state office claims~~] department to [~~process claims~~] administer the Unemployment Compensation Law.

~~[L.]~~ K. “Password” means a series of letters and numbers intended by the sender and receiver to provide additional security to electronic transmissions. Typically, the password is adopted by the sender and conveyed to the receiver prior to a series of communications. The password is used to verify the identity of the sender of the communications. The password, along with the sender’s “username” can constitute a signature for all legal purposes.

~~[M.]~~ L. “Personal identification number” or “PIN” means a series of letters and numbers intended by the sender and receiver to provide additional security to electronic transmissions. The terms “password” and “PIN” are used interchangeably in the department’s rules, regulations and policies.

~~[N.]~~ M. “Rule” and “regulation” are synonymous and refer to provisions of the New Mexico Administrative Code.

~~[O.]~~ N. “Secretary” means the cabinet secretary of the New Mexico department of workforce solutions or that person’s official designee as provided in the department’s internal policies and procedures.

~~[P.]~~ O. “Signature” means any means of signature including, but not limited to, manual, facsimile, electronic, digital or other means permitted by law.

~~[Q.]~~ ~~“Sole proprietorship” is a business operated by individual whose ownership interest is not held as shares in a corporation, limited liability company, general or limited partnership or limited liability partnership. The use of the terms “sole proprietor” or “sole proprietorship” do not exclude marital community ownership or a marital partnership.~~

~~[R.]~~ ~~“State office claims” means the claims section of the unemployment insurance bureau of the employment security division of the New Mexico department of workforce solutions.~~

~~[S.]~~ P. “Tax section” means the tax administration section of the unemployment insurance [~~bureau of the employment security~~] division of the New Mexico department of workforce solutions.

~~[T.]~~ ~~“The assistant unemployment bureau chief for claims” means that person or that person’s official designee.~~

~~U.~~ “The assistant unemployment bureau chief for tax” means that person or that person’s official designee.]

[~~V~~] **Q.** “The director of the employment security division” means that person or that person’s official designee as provided in the department’s internal policies and procedures.

[~~W.~~ “The unemployment insurance bureau chief” means that person or that person’s official designee as provided in the department’s internal policies and procedures.]

[~~X~~] **R.** “Transmit” means any method of communication customary in the business community, including but not limited to U.S. postal service, private courier services, personal delivery and electronic communications such as telephone, facsimile, electronic mail and internet. Unless specifically required by law or department rule, transmissions and communications do not require hard or paper documents. Unless specifically required by law or department rule, the date and time of the receipt of the transmittal by the appropriate department official is the received or filed date.

[~~Y~~] **S.** “Unemployment Compensation Law” means Section 51-1-1 et seq. NMSA 1978 as amended from time to time.

[~~Z~~] **T.** “Username” means the term as commonly used in electronic communication which is an abbreviation of the name of the sender of electronic communications. Typically, the username, which is less secure, is used in conjunction with a password or PIN to provide secure communications between a sender and receiver while allowing the receiver assurances and verification of the identity of the sender.

[~~AA~~] **U.** “Wages” means all ~~remuneration~~ compensation for employment except as provided in these rules or in state and federal statutes applicable to unemployment compensation.

(1) Borrowed monies, including monies borrowed from a 401(K) or other pension account, even if such borrowed money may create a taxable event, shall not be deemed ~~remuneration~~ compensation or wages such as to disqualify the individual from unemployment benefits.

(2) 26 U.S. C. Section 3306(b)(13) of the Internal Revenue Code excludes from the definition of wages “any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129.” Under 26 U.S.C. Section 127 of the Internal Revenue Code, employer-paid education expenses are excludable from the gross income of and wages of an employee if provided under an educational assistance plan. This exclusion applies to both graduate and undergraduate courses and is effective with respect to courses beginning after December 31, 2001.

[11.3.100.7 NMAC - N, 01-01-2003; A, 11-15-2012; A, 10/29/2019]

11.3.100.102 VALUATION OF ~~REMUNERATION~~ IN KIND COMPENSATION:

A. If a claimant receives any wages in a medium other than cash, the reasonable cash value of any ~~remuneration~~ compensation other than cash shall be deemed for all purposes of the Unemployment Compensation Law to be either:

(1) the amount agreed upon between the employing unit and the claimant if the terms of the agreement are reported to the department and the department agrees that such agreed amount or value is reasonable; or

(2) the cash value as shown to the satisfaction of the department.

B. If the department determines that the amount agreed to is unreasonable, or if the employing unit and the individual fail to agree upon an amount, or if the employing unit fails to report the terms of an agreement to the department and fails to show the cash value of such non-cash ~~remuneration~~ compensation prior to the due date of contributions or payment in lieu of contributions with respect to such wages, the department shall fix an amount or value after considering all available information or evidence. The amount fixed by the department shall be deemed for all purposes of the Unemployment Compensation Law to be the cash value of the claimant’s wages received in any medium other than cash.

[7-15-98; 11.3.100.102 NMAC - Rn, 11 NMAC 3.100.102, 01-01-2003; Repealed, 11-15-2012; 11.3.100.102 NMAC - Rn & A, 11.3.100.105 NMAC, 11-15-2012, A, 10/29/2019]

11.3.100.106 AVAILABILITY AND CONFIDENTIALITY OF DEPARTMENT RECORDS:

A. The Public Records Act permits the inspection of public records of this state “except as otherwise provided by law,” Paragraph (8) of Subsection A of Section 14-2-1 NMSA 1978. Section 51-1-32 NMSA 1978 requires that “information obtained from employers, employing units or claimants pursuant to the administration of the Unemployment Compensation Law and determinations as to the benefit rights of any claimant are confidential and shall not be open to inspection in any manner revealing the claimant’s employer’s or employing unit’s identity

except that such information may be made available to those designated persons and agencies, and for the purposes specified in regulations issued by the secretary.”

B. The department’s files and records, including but not limited to investigation reports, statements, memoranda, correspondence or other data, regardless of the media on which stored, pertaining to matters under consideration or scheduled for hearing, other departmental proceeding or judicial appeal shall be available for inspection and copying, at any reasonable time by the employing unit or individual who is a party to any proceeding before the department.

C. The contents of the department’s files and records shall not be released to any person except the employers, employing units or claimants to whom the file or record pertains or the employers’, employing units’ or claimants’ authorized representative, and then, only upon a signed, written release, court order, grand jury subpoena or search warrant. Except in instances of court orders, grand jury subpoenas and search warrants, if more than one party is named in the file or record sought, both parties must sign a consent to the release of the file or record if it is sought for any purpose other than a proceeding before the department.

D. With the consent and approval of the secretary and upon advice of the department’s general counsel, the contents of the department’s files and records may be released to law enforcement agencies for the purpose of criminal investigations and child support proceedings.

E. From time to time, the department may enter into agreements to exchange information with other government agencies and with non-government providers of public assistance, which agreements may provide for the exchange of information otherwise confidential under Section 51-1-32 NMSA 1978. The conveyance of this information is for the purpose of obtaining information necessary for the department to provide services to its customers or so that other agencies can provide public assistance benefits to the individuals about whom the information pertains. In such instances, every reasonable effort shall be made to maintain the confidentiality of the information exchanged.

F. Unless otherwise provided by statute or a written agreement provided in Subsection E of 11.3.100.106 NMAC, the department shall charge the indicated fees for copies of department files and records:

- ~~[(1)]~~ audio tape, \$3.00 per tape;
- ~~[(2)]~~ video tape, \$5.00 per tape;
- ~~[(3)]~~ floppy disc, \$1.00 per disc;]
- ~~[(4)]~~ (1) CD or DVD disc, \$5.00 per disc;
- ~~[(5)]~~ (2) printed paper copies, \$1.00 of first page of file or request; 50 cents per page thereafter up to 100 copies; 25 cents all copies thereafter within the same file or request;
- ~~[(6)]~~ (3) staff research time, \$20.00 per hour for all time in excess of one hour spent in locating or reviewing a file prior to copying;
- ~~[(7)]~~ (4) employment or income verification, whether or not copies are requested, \$6.00; and
- ~~[(8)]~~ (5) any other request shall be charged at a reasonable rate for the equipment, staff and other resources used to provide the copies.

[11.3.100.106 NMAC - N, 01-01-2003; 11.3.100.106 NMAC - Rn & A, 11.3.100.109 NMAC, 11-15-2012; A, 10/29/2019]

11.3.100.107 WEBSITE:

A. For the convenience of the department, its employees, its customers and the general public, the department operates and maintains one or more websites to provide a portal to services offered by the department. The website contains original material pages and material developed by the department as well as commercially prepared software systems acquired to provide access to services that support the ~~[Workforce Investment Act]~~ Workforce Innovation Opportunities Act and the department’s mission. The department website also features links to the websites of other providers who also offer services that are related or complementary to the services offered by the department.

B. Binding agreement: Use of the department’s website constitutes acceptance as a contract of the published terms and conditions as provided in this rule and as published on the website from time to time.

C. General disclaimer: The department shall attempt to ensure that the information on the website is accurate by continuously updating the information. The department does not warrant or guarantee that the information is free from error. The website is a work in progress, under constant development in order to better serve the website users. The department accepts no liability for any loss or damage, direct, indirect, consequential or otherwise, incurred in the reliance on the material, information or programs provided on the website.

D. Public information: Information on the website is public information pursuant to the Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

E. Property of the department: All the material, information or programs on the department website are the property of the department unless otherwise specified. The material, information or programs on the department website:

- (1) are provided as a public service for informational and educational purposes only.
- (2) are not intended as legal advice of any kind.
- (3) may be used only for the purpose of gaining general information or for nonprofit

purposes.

(4) is for public use and may be duplicated and disseminated for non-commercial purposes so long as not subject to another's copyright; any such duplication or dissemination must be accompanied by a citation acknowledging the department as the source of the information and the department's copyright and trademark notices;

(5) may not be used for commercial purposes of any kind without the written permission of a division director or higher officer of the department except that employment listings may be used by individual website users for obtaining employment.

F. Copyright notice: All copyrightable text, graphics, design, selection and arrangement of information is protected by copyright (2011, New Mexico department of workforce solutions).

G. Third party links: The department website provides links to third party websites and vice versa as a courtesy and convenience to the department's website users. The department is not responsible for the content or condition of third party websites. The department has no responsibility or liability to users for the content or accuracy of websites linked from this page or websites that provide a link to this page. The department does not endorse the views, products or services of third party websites. The department has no responsibility for the privacy practices or internal content of linked sites. The provision of a link provides no assurance that the linked site has a privacy policy similar to the department's privacy policy.

H. Privacy: The department is committed to maintaining the privacy of the personal information of those persons who access and use the department's website. The department is committed to maintaining the security of its computer system.

(1) Monitoring: The department's computer system including the website is monitored to ensure proper operation, to verify the functioning of applicable security features and for similar purposes.

(2) Personally identifiable information: For the purpose of the website, "personally identifiable information" means information collected on-line that could serve to identify an individual, including, but not limited to:

- (a) first and last name;
- (b) physical address;
- (c) e-mail address;
- (d) telephone number;
- (e) social security number;
- (f) tax identification number;
- (g) credit card information;
- (h) bank account information;
- (i) any combination of information that could be used to determine identity.

(3) Except where specified, website users need not provide personally identifiable information to visit the department website or download information from the website.

(4) Any personally identifiable information provided to the department will be used solely by the department, its agents, contractor and employees in accordance with Section 14-8-21 NMSA 1978, unless the information is designated as a public record under the Public Records Act.

(5) Unless the user chooses to provide the information for a specific purpose, personally identifiable information is not collected and maintained by the department.

(6) Personally identifiable information may be required to qualify or determine eligibility for certain government services.

(7) The department shall take reasonable precaution to protect the confidentiality of personally identifiable information from loss, misuse, alteration or disclosure to unauthorized persons.

(8) Unless otherwise prohibited by state or federal law or applicable rules and regulations, an individual may access and correct personally identifiable information whether or not the access was created by accident, unauthorized access or a change in circumstances.

(9) E-mail or other forms of information requests sent to the department website may be saved and used to respond to the request, to forward the request to the appropriate agency, communicate updates of

information or to provide the department's webmaster with valuable customer feedback to assist in improving the website.

(10) Despite all precautions, the department does not guarantee or warrant users of the website against hardware failure, unauthorized intrusion or other technical problems that might affect privacy and confidentiality.

(11) To maintain the website user's privacy, the department requires the use of a password before accessing any personal or account information. The department shall provide methods for the assignment of user names and passwords in a manner customary in the industry from time to time.

I. Trespass: The department shall use all legally available means to prevent, monitor and investigate any attempt to deface, delete, modify or misappropriate the department's website, server, database, information system or other department technology asset.

J. Finality: No information provided to the department through this electronic medium is final until the department transmits a confirmation to the website user.

K. Publication of an amendment to website policy: A copy of this rule shall be published on the website. From time to time, the department may heighten, but shall not decrease the privacy policy without amendment of this rule.

[11.3.100.107 NMAC - N, 01-01-2003; 11.3.100.107 NMAC - Rn & A, 11.3.100.110 NMAC, 11-15-2012; A, 10/29/2019]

11.3.100.109 ELECTRONIC TRANSACTIONS:

A. Official communications with the department shall contain all material customarily found on paper forms.

B. ~~[Additionally,]~~ Electronic forms and records used by the department shall clearly indicate the purpose of the form, instructions for completion and submission electronically, information on receiving assistance by telephone or e-mail, require the submission of a valid e-mail address, telephone number or United States postal service address at which the sender can be contacted regarding the information submitted and the purpose underlying the submission of the information.

C. A person choosing to communicate with the department electronically bears the responsibility of ensuring that the information submitted and the methods by which the person can be contacted are accurate. The recipient must notify the department in the event of an address change.

D. If electronic correspondence is elected, the recipient will not receive correspondence by US mail. It is the recipient's obligation to exercise due diligence in checking the email of record and to frequently log into the online account to obtain any correspondence.

E. The use of a person's name, identifying information, username and password or PIN in electronic and other communications with the department is deemed a signature for all legal purposes.

F. Persons using a means of electronic communication shall be advised that the submission of the information using the identifier is deemed a binding signature.

G. Use of electronic notification constitutes reasonable and proper notice for all purposes, laws, rules and regulations.

H. Employers shall submit all quarterly wage reports to the Department electronically using their online accounts, unless the Department has granted an express, written exception.

I. Third party administrators shall remit all quarterly wage contributions, payments, and fact finding responses electronically.

[11.3.100.109 NMAC - N, 01-01-2003; 11.3.100.109 NMAC - Rn & A, 11.3.100.112 NMAC, 11-15-2012; A, 10/29/2019]