

This is an amendment to 11.3.300 NMAC, Sections 1, 7, 302, 303, 304, 308, 315, 320, and 321, effective October 29, 2019.

**11.3.300.1 ISSUING AGENCY:** New Mexico Department of Workforce Solutions, [~~Employment Security Division~~], P.O. Box 1928 Albuquerque, NM 87103.  
[11.3.300.1 NMAC - Rp, 11.3.300.1 NMAC, 11/1/2018; A, 10/29/2019]

**11.3.300.7 DEFINITIONS:**

- A. “Additional claim”** means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a period of employment other than self-employment which occurred subsequent to the date of filing the last initial, additional or reopened claim.
- B. “Agent state”** means any state in which an individual files a claim for benefits from another state or states.
- C. “Alternate base period”** means the last four completed quarters immediately preceding the first day of the claimant’s benefit year.
- D. “Base period and benefit year”** means the base period and benefit year applicable under the unemployment compensation law of the paying state.
- E. “Base period”**, also called the **“regular base period”**, means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978 or the alternate base period.
- F. “Benefits”** means the [~~unemployment insurance compensation~~] benefits payable to a claimant with respect to their unemployment, under the unemployment [~~insurance~~] compensation law of any state.
- G. “Claimant”** means an individual who has filed an initial claim, additional claim or reopened claim for unemployment [~~compensation~~] benefits and this filing is within a benefit year or other eligibility period.
- H. “Combined-wage claimant”** means a claimant who uses wages from more than one state to establish monetary eligibility for benefits and who has filed a claim under this arrangement.
- I. “Educational or training institution or program”** means any primary school, secondary school or institution of higher education, public or private, which offers instruction, either for a fee or without charge, and which requires attendance and participation, either in person or online, to receive the instruction.
- J. “Emergency unemployment compensation” (EUC)** occurs when regular unemployment benefits are exhausted and extended for additional weeks. Unemployment extensions are created by passing new legislation at the federal level, often referred to as an “unemployment extension bill”. This new legislation is introduced and passed during high or above average unemployment rates.
- K. “Employment”** means all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise.
- L. “Full-time employment”** means the normal full-time hours customarily scheduled and prevailing in the establishment in which an individual is employed, but in no event less than 32 hours per week.
- M. “Good cause”** means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason. In determining whether good cause has been shown for permitting an untimely action or excusing the failure to act as required, the department may consider any relevant factors including, but not limited to, whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party that prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party’s physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action. However, good cause cannot be established to accept or permit an untimely action or to excuse the failure to act, as required, that was caused by failure to keep the department directly and promptly informed of the claimant’s, employer’s or employing unit’s correct address. A written decision concerning the existence of good cause need not contain findings of fact on every relevant factor, but the basis for the decision must be apparent from the order.
- N. “Initial claim”** means a new claim application submitted by the claimant to establish a benefit year and to obtain a determination of weekly and maximum benefit amounts.
- O. “Instruction”** means all teaching or opportunity for learning whether of a vocational or academic nature.



**P. “Interstate benefit payment plan”** means the plan approved by the interstate conference of employment security agencies as approved by the United States secretary of labor under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

**Q. “Interstate claimant”** means an individual who claims benefits under the unemployment [insurance] compensation law of one or more liable states through the facilities of an agent state. The term “interstate claimant” shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specified areas.

**R. “Last employer”** means the most recent employer or employing unit from which the claimant separated for reasons other than lack of work; or in the event that the claimant separated from the most recent employer for lack of work, the employer or employing unit before that from which the claimant separated for any reason other than lack of work, provided the claimant has not subsequently worked and earned wages in insured work or bona fide employment other than self-employment in an amount equal to or exceeding five times the claimant's weekly benefit amount.

**S. “Liable state”** means any state against which a claimant files, through another state, a claim for benefits.

**T. “Paying state”** means the state against which the claimant is filing that actually issues the benefit payment.

**U. “Real estate salesperson”** means an individual who is licensed by the New Mexico real estate commission.

**V. “Regular base period”** means the first four of the last five completed quarters as provided in Subsection A of Section 51-1-42 NMSA 1978.

**W. “Reopened claim”** means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a continuous period of unemployment for which the claimant did not file timely continued claims and during which the claimant either remained unemployed or had a period of self-employment since last reporting on this claim.

**X. “State”** means the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

**Y. “Student”** means any individual enrolled in an educational or training institution or program.

**Z. “Trade adjustment assistance”** (TAA) is a federal program that provides a variety of reemployment services including training and job-searching assistance and benefits to displaced workers who have lost their jobs or suffered a reduction of hours and wages as a result of increased imports or shifts in production outside the United States.

**AA. “Trade readjustment allowances”** (TRA) are income support payments to individuals who have exhausted unemployment benefits and whose jobs were affected by foreign imports as determined by a certification of group coverage issued by the Department of Labor.

**BB. “Transitional claim”** means a claim filed to request a determination of eligibility and establishment of a new benefit year having an effective date within a seven-day period immediately following the benefit year ending date and a week for which compensation or waiting week credit was claimed; i.e. continuous certification.

**CC. “Wages”** means all compensation for services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

**DD. “Week of unemployment”** means any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

[11.3.300.7 NMAC - Rp, 11.3.300.7 NMAC, 11/1/2018; A, 11.3.300.7 NMAC, 9/1/2019; A, 10/29/2019]

### **11.3.300.301 FILING INITIAL, ADDITIONAL AND REOPENED CLAIMS:**

**A.** Upon filing an initial claim, an additional claim, or a reopened claim, the claimant shall be subject to a waiting week period before the commencement of benefits begins.

**B.** Unless otherwise prescribed, any claimant wishing to claim benefits shall register for work, file an initial, additional, transitional or reopened claim for benefits and provide the name and address of their last employer.

**C.** The date of filing of any initial, additional or reopened claim shall be the Sunday of the week in which filed. Upon a showing of good cause, any initial claim or additional claim may be back-dated to the Sunday of the week immediately following the week in which the claimant was separated, and any reopened claim may be back-dated up to a maximum of ~~[twenty-one]~~ 21 days from the preceding Sunday of the date of the request for back-



dating. "Good cause," as used in 11.3.300.301 NMAC, exists when it is established that factors or circumstances beyond the reasonable control of the claimant caused the delay in filing. All requests for back-dating or post-dating shall include a fact-finding ~~[report]~~ response.

**D.** Unless otherwise prescribed, all claims shall be made online or by phone, giving all information required thereby. A claimant shall also separately register for work within 14 calendar days of the date the claim is filed. If a claimant is already registered with the department from a prior claim, the registration must be reactivated within 14 days of the date the claim is filed. If a claimant's registration is not current with the department, their benefits shall be temporarily withheld until they comply unless good cause for the failure to register is shown. [11.3.300.301 NMAC - Rp, 11.3.300.301 NMAC, 11/1/2018; A, 11.3.300.7 NMAC, 9/1/2019; A, 10/29/2019]

#### **11.3.300.303 TIMELY RESPONSE TO REQUEST FOR INFORMATION:**

**A.** Any response to a request for ~~[additional]~~ information from the department must be received by the department within 10 calendar days from the date transmitted. Responses to requests for additional information must be received within two business days from the date of transmission.

**B.** The 10 calendar day period shall begin to run on the first day after the date the request was transmitted to the claimant or to the employer. If the tenth calendar day falls on a date when the department offices are closed, receipt on the first business day thereafter shall be timely. If a response is not received timely, the department will make a determination based on the information available at that time.

**C.** Employers and third party administrators must respond to request for additional information electronically.

[11.3.300.303 NMAC - Rp, 11.3.300.303 NMAC, 11/1/2018; A, 10/29/2019]

#### **11.3.300.304 LATE FILING OF CONTINUED CLAIMS:**

**A.** If the department finds good cause for a claimant's failure to timely file a continued claim, the claimant may file a late continued claim provided the certification is filed ~~[not later than the thirteenth day following the last day of the week requiring the certification]~~ within 14 days of the last day of the week requiring certification.

**B.** A certification not processed due to a department request for additional information from the claimant shall be considered timely if the requested information is received by the department no later than 10 calendar days after the request for additional information is transmitted to the claimant.

[11.3.300.304 NMAC - Rp, 11.3.300.304 NMAC, 11/1/2018; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

#### **11.3.300.308 CLAIM DETERMINATION:**

**A.** Notice to employer of filing of claim: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to the claimant's last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim and a fact-finding questionnaire. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department within 10 calendar days from the date the notice of claim is sent. Unless excused by the department, the response must be an electronic transmittal.

**B.** Request for additional information: Prior to issuance of a determination the department may request additional information from the employer, the claimant or witnesses relative to the separation of the claimant from employment. The employer shall provide the department full and complete information to the request for additional information within two business days from the transmission. Unless excused by the department, the response must be an electronic transmittal.

**C.** Initial determination: A determination on any claim for unemployment benefits shall be transmitted only after the department has evaluated the claim.

**(1)** ~~[When a non-monetary issue is not raised in an application for benefits and the employer's response is not received by the department within 10 calendar days after the transmission of the notice of claim, a determination shall be made based upon the information on the application.]~~ If an employer's response is not received within 10 calendar days after the transmission of the notice of a claim, and a non-monetary issue is not raised in the application for benefits, a determination shall be made upon the information on the application.

**(2)** The 10 day period shall begin to run on the day after the notice of claim was transmitted to the employer as indicated on the application. If the tenth calendar day falls on the weekend or on a holiday, the reply shall be timely if received by the department on the following business day.



(3) After the 10 day period has passed, the department shall immediately transmit to the parties the determination including the reason, and shall advise the parties of the right to appeal that determination pursuant to these rules.

(4) If the claimant is subsequently disqualified from the receipt of benefits resulting in an overpayment, the employer will remain liable for any benefit charges incurred to the date of disqualification if the employer or an agent of the employer demonstrates an established pattern of failing to respond timely or adequately to the notice of claim within the ~~ten~~ 10-day period. ~~[In no employer shall be liable for more than ten weeks' worth of benefits charges pursuant to 11.3.300.308 NMAC as a penalty for its failure to respond to the claim in a timely manner.]~~

(a) A pattern is defined as failure to respond timely or adequately to five claims, or more at the secretary's discretion, within a calendar year.

(b) An inadequate response is defined as the employer's failure to provide relevant information or documentation that was reasonably available at the time a response was requested by the department.

(5) An employer may appeal a determination within 15 days of the assessment of the penalty that the employer or agent of the employer failed to respond timely or adequately to the notice of claim. Upon a finding on appeal that the employer or an agent of the employer had good cause for failure to transmit a timely or adequate response, the employer will be relieved of such charges. Overturned determinations will not be factored into the analysis of whether a pattern exists.

**D. Redetermination:** A redetermination may be issued only if all the following criteria are met:

(1) The department perceives the need for reconsideration as a result of a protest by an interested party due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation, an additional fact not available to the department at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, transmitting a notice to the wrong employer or address, an employer's timely response statement disputing a claim for benefits, or other administrative error.

(2) All evidence and records are re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be issued no later than 45 calendar days from the original determination date or 45 days from the date of the first payment derived from the original determination, whichever event occurs latest.

(5) The department may issue a redetermination provided that the employer's statement was received within the statutory time limits and within less than 45 calendar days from the date of the first payment.

(6) If the claimant began collecting benefits and as a result of redetermination will be denied benefits, the claimant shall be advised.

**E. Stopping payment due to administrative error:** Once an initial determination is made and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to 11.3.500.9 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule, regulation, or any determination made pursuant to Subsection C of 11.3.300.308 NMAC, such payment shall not be deemed to have been made pursuant to a determination of eligibility.

**F. Employer's notice of a labor dispute:** When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each individual is participating in the dispute or has a direct interest in the outcome.

**G. Termination of continued claims:** Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity to respond.

[11.3.300.308 NMAC - Rp, 11.3.300.308 NMAC, 11/1/2018; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

### **11.3.300.315 RETIREMENT INCOME:**

**A.** Each eligible claimant who, pursuant to a pension or retirement plan financed in whole or in part by a base-period employer of the claimant shall have the weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic or lump-sum payment that exceeds the percentage contributed to the plan by the eligible claimant. The maximum benefit amount payable shall also be



reduced to an amount not more than 26 times the reduced weekly benefit amount. For purposes of this section periodic retirement income is not deemed "received", if, under the time period allowed by the Internal Revenue Code, 26 U.S.C. Section 3405 and related provisions, that amount is placed in a non-taxable qualifying retirement account.

**B.** A claimant's, monthly pension or retirement payment shall be multiplied by 12, then divided by 52 to determine the amount of pension or retirement income attributed to a week beginning with the last week worked prior to separation from employment.

**C.** A lump-sum pension or retirement payment shall be considered a periodic payment and the amount divided by 52 and allocated on a weekly basis beginning with the last week worked prior to separation from employment.

[11.3.300.315 NMAC - Rp, 11.3.300.315 NMAC, 11/1/2018; A, 10/29/2019]

### **11.3.300.320 WORK SEARCH REQUIREMENT:**

**A.** WORK SEARCHES: To qualify for continued benefits, a claimant must:

(1) be a member of a union with a hiring hall or referral hall and meet the union requirements for job referral or placement; ~~[a union with a hiring hall is one that actively seeks to place its members in employment]~~

(a) the claimant must be a member in good standing at the time of certification;

(b) the hiring hall or referral hall must be actively seeking to place its members in employment; or

(2) actively seek work by contacting a minimum number of different employers each week during the week for which benefits are claimed, as directed by department representatives. It is not mandatory that the work searches occur on different days of the week;

(a) a claimant may contact the same employer more than one time during a given week, which may count for multiple searches if the claimant applies for multiple jobs with the same employer so long as the applications are distinct and separate positions;

(b) a claimant may list jobs applied for through the New Mexico department of workforce solutions workforce connection centers, the New Mexico state personnel office (SPO), America's job bank, Workforce Innovation and Opportunity Act (WIOA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification;

(3) Other unions may apply for work search waivers by submitting a request in writing to the secretary, who may upon discretion, make an exception to the work search requirements.

**B.** in order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must seek work within the week for which benefits are being claimed and actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as required by the union in order to be eligible for job referral or placement

**C.** claimants must keep a record of the name, address and telephone number or electronic mail address of each employer contacted in the event of an audit; and must retain a copy of any email confirmation received as a result of applying for a job online.

(1) This information must be provided to department representatives upon request;

(2) the claimant must provide the requested information no later than 10 calendar days from the date of the department's request;

(3) the claimant must provide sufficient information for the department to verify the claimant's work search efforts. If the claimant is able to provide the specific job number or requisition number for the job applied for, this information will be considered sufficient to verify the contact.

(4) failure to provide the required information without good cause may result in a denial of benefits for the week in question;

~~[the claimant must provide adequate information to allow verification of the contact;]~~

(5) if the information provided is insufficient to verify a valid work search occurred, benefits for the week in question will be denied;

(6) if a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits.[-s]Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978;

(7) any denial imposed for failure to provide the required information may be appealed pursuant to 11.3.300.500.9 NMAC;



**D.** A claimant whose work search is deemed inadequate or invalid shall be denied benefits for the week in question. A rebuttable presumption that the claimant failed to meet the active work-search requirements for that week will be raised in all cases where a claimant's work search is deemed inadequate or invalid. In order to overturn the denial of benefits the claimant shall provide proof that the claimant did meet the active work-search requirements for that week. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978. Any denial imposed on the basis of an inadequate or invalid work search may be appealed pursuant to 11.3.300.500.9 NMAC.

**E.** The department may waive the work search requirements for claimants who the department determines are on temporary lay-off status from their regular full-time employment upon receipt of an assurance from the employer that the lay-off shall not exceed four weeks or upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. Such waivers shall apply only to the four-week period covered on the determination. A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to the claimant's recall date or start date to the department. The claimant's eligibility shall then be subject to redetermination pursuant to Subsection A of 11.3.300.308 NMAC.

**F.** In cases where the department determines a claimant is in a temporary lay-off status due to a government furlough or shutdown, the department may waive the work search requirements during the period of the temporary lay-off for all affected claimants.

[11.3.300.320 NMAC - Rp, 11.3.300.320 NMAC, 11/1/2018; A/E, 1/9/2019; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

**11.3.300.321 REEMPLOYMENT SERVICES:** A claimant shall be eligible to receive benefits with respect to any week only if the claimant participates in reemployment services such as job search assistance services, if the claimant has been determined to be likely to exhaust regular benefits, and needs reemployment services pursuant to a profiling system established by the department, unless the department determines that:

- A.** this claimant has completed such services; or
- B.** there is justifiable cause for the claimant's failure to participate in such services;
- C.** if the claimant does not participate in reemployment services as required by the department,

benefits shall be denied beginning the week of non-participation.

[11.3.300.321 NMAC - Rp, 11.3.300.321 NMAC, 11/1/2018; A, 10/29/2019]

**11.3.300.325 OVERPAYMENTS AND WAIVER OF OVERPAYMENTS PURSUANT TO THE TRADE ACTS ~~[AND TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACTS]~~ OR ANY ENACTED FEDERAL EXTENSION PROGRAM:**

**A.** The department shall use the process set forth herein to evaluate disputes of overpayments paid under the Trade Acts, the Trade Adjustment Assistance (TAA), Trade Readjustment Assistance (TRA) ~~[or the Emergency Unemployment Compensation (EUC) Acts]~~ Federal Extended Benefits, or any enacted federal extension program under the following circumstances:

(1) When a decision of the department results in an overpayment, an appealable determination will be sent to the claimant. The claimant may file an appeal no later than 15 days from the date of the determination in accordance with 11.3.500 NMAC.

(2) At the department's discretion, a request for review of an overpayment may be administratively initiated to determine if a waiver of overpayment will be approved. A waiver will be approved if the department determines that:

- (a) the application was made timely;
- (b) payment was made without the fault of the claimant; and
- (c) requiring repayment would be contrary to equity and good conscience.

(3) The department's affirmative finding of any one of the following factors of fault precludes a waiver:

- (a) that the claimant knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or
- (b) that the claimant knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or
- (c) that the claimant knew or should have known that he was not eligible for the payment; or



(d) that the department has previously issued a determination of fraud in regards to the overpayment.

(4) The department shall consider the following factors in determining whether, in equity and good conscience, the department should require repayment:

(a) whether the overpayment was the result of a decision on appeal;

(b) whether the claimant was given notice that repayment would be required in the event of reversal on appeal;

(c) whether the recovery of the overpayment would cause an extraordinary and lasting financial hardship to the claimant, resulting in the claimant's inability to obtain minimal necessities of food, medicine and shelter for at least 30 days and period of financial hardship lasting at least three months, and

(d) whether, if recoupment from other benefits is proposed, the length of time of extraordinary and lasting financial hardship shall be the longest potential period of benefit eligibility as seen at the time of the request for waiver of determination.

(5) In determining whether fraud has occurred, the department shall consider the following factors:

(a) whether the claimant knowingly made, or caused another to make, a false statement or representation of a material fact resulting in the overpayment;

(b) whether the claimant knowingly failed, or caused another to fail, to disclose a material fact resulting in the overpayment.

**B.** If a determination of fraud is made, the claimant shall be ineligible for any further TAA, TRA or [TEUC] any other enacted federal extension program benefits and shall be ineligible for waiver of any overpayment.

**C.** A finding that the overpayment was not the result of a decision on appeal or that the recovery would not cause extraordinary and lasting financial hardship shall preclude a waiver.

**D.** If a claimant fails, without good cause, to complete training, a job search or a relocation, any payment to such claimant that is not properly and necessarily expended in attempting to complete the activity shall constitute an overpayment. Such overpayments shall be recovered or waived according to the standards of fault, equity and good conscience contained in 11.3.300.325 NMAC.

**E.** In any event, no repayment shall be required or deduction made until a notice and an opportunity for fair hearing have been provided to the claimant in accordance with 11.3.500 NMAC, a determination has been issued by the department, and the determination has become final.

[11.3.300.325 NMAC - Rp, 11.3.300.325 NMAC, 11/1/2018; A, 11.3.300.304 NMAC, 9/1/19; A, 10/29/2019]

### **11.3.300.326 DOMESTIC ABUSE:**

**A.** A claimant is eligible for waiting period credit or benefits if the claimant voluntarily leaves work due to circumstances directly resulting from domestic abuse.

(1) "Domestic abuse" means abuse as defined in Section 40-13-2 NMSA 1978, and includes but is not limited to any incident by a household member against another household member resulting in: physical harm; severe emotional distress; bodily injury or assault; a threat causing imminent fear of bodily injury by any household member; criminal trespass; criminal damage to property; repeatedly driving by a residence or work place; telephone harassment; stalking; harassment, or harm or threatened harm to children.

(2) "Household member" means a spouse, former spouse, family member, including relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, intimate partner or a person with whom the claimant has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member.

**B.** Documentation: The claimant shall provide documentation satisfactory to the department for the determination of whether the claimant has experienced domestic abuse for purposes of ~~[unemployment insurance]~~ benefit eligibility. The documentation shall be of a competent nature, reasonably susceptible to verification and bearing indicia of credibility. The documentation shall include a sworn statement by the claimant regarding the domestic abuse. The documentation may include information from individuals or organizations from whom the claimant has sought assistance for the domestic abuse, including but not limited to police or court records, documentation from a shelter worker, attorney at law, a member of the clergy, physician or other medical or mental health practitioner. If upon review of the claimant's documentation, the department determines that further verification is warranted, the department may require additional supporting documentation.

**C.** Determination: To be eligible for benefits as a result of domestic violence, the department must first determine that the claimant is monetarily eligible ~~[for unemployment insurance compensation benefits]~~. The existence of domestic violence shall be established by a preponderance of the evidence.



(1) Factors to be considered in determining if claimant voluntarily leaves work as a result of domestic violence include but are not limited to whether: claimant reasonably fears domestic abuse at or en route to or from claimant's place of employment; claimant reasonably is required to relocate to another geographic area to avoid future domestic abuse; claimant reasonably believes that leaving employment is necessary for the future safety of the claimant or the claimant's family due to the domestic abuse; the abuse itself interfered with claimant's ability to work, travel or prepare for work; claimant reasonably left the labor market to escape such abuse; the abuse occurred at claimant's place of employment; the abuser's relatives or friends or the abuser were co-workers of claimant or otherwise present at the worksite; claimant informed the employer and gave the employer the opportunity to ameliorate the domestic abuse within a reasonable period of time, but the employer would not or could not do so; claimant has filed a civil or criminal proceeding against an alleged abuser; however nothing in this provision shall be construed as requiring the filing of a civil or criminal proceeding as a prerequisite to establishing the existence of domestic violence.

(2) Claimant must indicate at the time of filing the claim that the reason for leaving employment was as a result of qualifying domestic abuse.

(3) Claimant must provide evidence tending to prove the existence of qualifying domestic abuse within 10 days of the filing of the claim.

(4) Claimant will be eligible to receive benefits retroactively to the date of filing if adequate documentation is received within 10 days of the filing of the claim, if otherwise eligible for benefits.

(5) If no documentation is received within 10 days of the filing of the claim, an initial determination will be issued denying the claim on the basis of domestic abuse.

(6) If claimant subsequently submits documentation tending to demonstrate the existence of domestic abuse, a determination will be made on the basis of the subsequent documentation submitted. Claimant will not be eligible to receive benefits retroactively to the date of filing but will be eligible to receive benefits retroactively to the date of submission of the subsequent documentation supporting domestic abuse.

(7) Only an alleged victim of domestic abuse may obtain benefits under this provision; an alleged perpetrator may not.

**D.** If domestic abuse is proven, a determination will be issued identifying domestic abuse as the reason for the separation and a contributing employer's account will not be charged any portion of benefits paid. [11.3.300.326 NMAC - Rp, 11.3.300.326 NMAC, 11/1/2018; A, 10/29/2019]