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John Bel Edwards, Governor  
Ava Dejoie, Secretary

## Office of the Secretary

April 22, 2021

The Honorable John Bel Edwards  
Governor of Louisiana  
900 N. Third Street, Fourth Floor  
Baton Rouge, LA 70802

VIA EMAIL ONLY TO: [sherry.lassere@la.gov](mailto:sherry.lassere@la.gov) and [john.walsh@la.gov](mailto:john.walsh@la.gov)

**RE: Emergency Rule for Voluntary State Income Tax Withholding from Unemployment Insurance Benefits**

Dear Governor Edwards:

Pursuant to R.S. 49:953(B), the Louisiana Workforce Commission hereby gives notice of the adoption of an Emergency Rule on April 26, 2021. The Rule is necessary to implement R.S. 23:1693(J) (Act 33 of the 2020 Reg. Session), which addresses the withholding of state income taxes from unemployment insurance benefits when a temporary increase in federal emergency unemployment insurance is in effect. In accordance with 26 U.S.C. §3304(a)(4)(C) of the Federal Unemployment Tax Act (FUTA) and R.S. 23:1664(2), failure to adopt this Rule on an emergency basis may imperil LWC's ability to receive federal funding for failure to meet conformity requirements, which would affect the ability of unemployed workers to receive benefits. Copies of Act 33 and 26 U.S.C. §3304 are attached for your review.

Louisiana Workforce Commission finds that an imminent peril to public health, safety and welfare requires that this emergency rule be adopted without prior notice or hearing to continue the Emergency Rule on the same subject that was most recently adopted on December 27, 2020. Failure to adopt this Rule on an emergency basis would have an adverse impact on the Louisiana Workforce Commission's eligibility for funding that is available under the CARES Act as extended by the American Rescue Plan Act of 2021.

The Emergency Rule shall be effective on April 26, 2021, and shall remain in effect for the maximum allowable period under the law or until a final Rule is promulgated, whichever occurs first. The agency shall take appropriate measures to make the Emergency Rule known to the persons who may be affected. You will find a copy of the Declaration of Emergency and the related Emergency Rule attached.

If you have any questions, please contact me at (225) 342-3001.

Yours truly,

A handwritten signature in blue ink, appearing to read "Ava M. Dejoie".

Ava M. Dejoie  
Secretary

Enclosures (2)

cc: Clay Schexnayder, Speaker of the House at [apa.housespeaker@legis.la.gov](mailto:apa.housespeaker@legis.la.gov)  
Patrick Page Cortez, Senate President at [apa.senatepresident@legis.la.gov](mailto:apa.senatepresident@legis.la.gov)  
Jeff Landry, Attorney General at [apa.submission@ag.louisiana.gov](mailto:apa.submission@ag.louisiana.gov)  
Office of the State Register at [Reg.Submission@la.gov](mailto:Reg.Submission@la.gov)

## **DECLARATION OF EMERGENCY**

### **Louisiana Workforce Commission Office of Unemployment Insurance Administration**

#### **Emergency Rule—State Income Tax Withholding from Unemployment Insurance Benefits (LAC 40:IV.383)**

The Louisiana Workforce Commission (LWC) is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., to promulgate a Rule to address the withholding of state income taxes.

This Emergency Rule is necessary to implement Act 33 of the 2020 First Extraordinary Session that created R.S. 23:1693(J), which addresses the withholding of state income taxes from unemployment insurance benefits when a temporary increase in federal emergency unemployment insurance is in effect. A delay in promulgating this Rule would have an adverse impact on the LWC's eligibility for federal funding because R.S. 23:1693(J) is not in conformity with 26 U.S.C. §3304(a)(4)(C) of the Federal Unemployment Tax Act (FUTA) as required under R.S. 23:1664(2). It is imperative that the LWC proceed expediently with this Rule because of the precarious position of the immense number of recently unemployed workers due to COVID-19, which is an imminent peril to public health, safety, and welfare that requires immediate action to provide benefits. Failure to adopt this Rule on an emergency basis may imperil LWC's ability to receive federal funding for failure to meet conformity requirements, which would affect the ability of unemployed workers to receive benefits. This Emergency Rule is being promulgated in order to continue the provisions of the August 29, 2020 Emergency Rule (*Louisiana Register*, Volume 46, Number 08), and the December 27, 2020 Emergency Rule (*Louisiana Register*, Volume 47, Number 01)

This Emergency Rule is effective April 26, 2021, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, R.S. 49:953 (B)(1) et seq., or until adoption of the final Rule, whichever occurs first.

**Title 40**  
**LABOR AND EMPLOYMENT**  
**Part IV. Employment Security**

**Chapter 3. Employment Security Law**

**§383. Voluntary State Income Tax Withholdings from Unemployment Insurance Benefits**

A. Pursuant to R.S. 23:1693(J), which was created by Act 33 of the 2020 First Extraordinary Session, withholding of state income taxes was made mandatory when any temporary federal emergency increase in benefits or any additional federal base benefit is in effect. However, under 26 U.S.C. §3304(a)(4)(C) of the Federal Unemployment Tax Act (FUTA), withholding from unemployment insurance must be voluntary in order to conform with federal requirements. R.S. 23:1664(2) requires that the administrator take such actions as may be necessary to meet the requirements of FUTA as interpreted by the U.S. Department of Labor. Therefore, regardless of whether any temporary federal emergency increase in benefits or any additional federal base benefits are in effect, a claimant may voluntarily elect to have state income taxes withheld at a rate of 4 percent.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1664(2), R.S. 23:1693(J), and R.S. 36:310.

**HISTORICAL NOTE:** Promulgated by the Louisiana Workforce Commission, Office of Unemployment Insurance Administration, LR 46:08 (August 2020), repromulgated LR 47:01 (January 2020), LR 47:



Ava M. Dejoie  
Secretary

ENROLLED

**ACT No. 33**

2020 First Extraordinary Session

HOUSE BILL NO. 62

BY REPRESENTATIVE ZERDINGUE

AN ACT

To enact R.S. 23:1693(J), relative to unemployment compensation; to provide for temporary federal emergency unemployment assistance; to provide for weekly benefit amounts; to require state income tax withholdings under certain circumstances, to provide for the promulgation of rules; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1693(J) is hereby enacted to read as follows.

§1693. Assignment of benefits; exemption of benefits from levy or execution; deduction for support; deduction for overissuance of food stamps

\* \* \*

1.(1) If a claimant is eligible to receive any temporary federal emergency increase in unemployment compensation benefits in addition to the maximum weekly benefit amounts established in R.S. 23:1474 or any additional federal base benefit, the claimant, when filing a claim for state unemployment compensation benefits, shall submit to withholdings of state income taxes at a rate of four percent. The Louisiana Workforce Commission shall electronically report and remit to the Department of Revenue in the same manner as an "employer" as that term is defined in R.S. 47:111(D) and required by R.S. 47:114.

HB NO. 62

**ENROLLED**

1                    (2) The Louisiana Workforce Commission in consultation with the  
2                    Department of Revenue shall promulgate rules and regulations for the  
3                    implementation and administration of this Subsection.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

**§ 3304. Approval of State laws, 26 USCA § 3304**

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KeyCue Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 26. Internal Revenue Code (Refs & Annos)  
Subtitle C. Employment Taxes (Refs & Annos)  
Chapter 23. Federal Unemployment Tax Act (Refs & Annos)

26 U.S.C.A. § 3304, L.R.C. § 3304

§ 3304. Approval of State laws

Effective: March 23, 2018

Currentness

(a) **Requirements.**—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903(c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of

Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor; \*

(D) amounts shall be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(E) amounts may be withdrawn for the payment of short-time compensation under a short-time compensation program (as defined under section 3306(v));

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(i)); and

(G) with respect to amounts of covered unemployment compensation debt (as defined in section 6402(f)(4)) collected under section 6402(f)–

(i) amounts may be deducted to pay any fees authorized under such section; and

(ii) the penalties and interest described in section 6402(f)(4)(C) may be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that–

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such