

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 expeditiously 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