

**RULES
OF
GEORGIA DEPARTMENT OF LABOR**

**CHAPTER 300-2
EMPLOYMENT SECURITY LAW**

**SUBJECT 300-2-1
DEFINITIONS**

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300-2-1-.01 Meaning of Terms Used

Rule 300-2-1-.01. Meaning of Terms Used

(1) "Law" means the Employment Security Law of Georgia, Official Code of Georgia Annotated (OCGA), Title 34, Chapter 8.

(2) "Commissioner" means the Commissioner of Labor of Georgia. Where appropriate, Commissioner shall also mean any duly authorized representative of the Commissioner.

(3) "Department" means the Georgia Department of Labor.

(4) "Reimbursable Basis" means the method of payment wherein an employing unit has elected to reimburse this department for the amount of benefits chargeable to such unit in lieu of making quarterly contributions to the department.

(5) Total, Part-Total, and Partial Unemployment.

(a) "Total Unemployment" means any week during which an individual performs no services and with respect to which no wages are payable to the individual.

(b) "Part-Total Unemployment" means any week during which an otherwise qualified individual works less than full-time and earns wages not exceeding the individual's weekly benefit amount plus Non-deductible earnings. An individual engaged in Part-time Employment is ineligible for Part-Total Unemployment unless the individual has been separated from Full-time Employment and the Part-time Employment does not unreasonably interfere with the individual's search for new Full-time Employment. An individual must report all gross earnings to the Department.

(c) "Partial Unemployment" means any complete pay-period week during which an individual is attached to the individual's regular employer and works less than full-time, due only to lack of work, and earns wages not exceeding the individual's weekly benefit amount plus Non-deductible earnings. Partial unemployment claims are initiated by the employer. An individual engaged in Part-time Employment is ineligible for Partial Unemployment.

NOTE: The Georgia Employment Security Law provides for benefit payments to be made in multiples of \$1.00. Therefore, Deductible Earnings must be adjusted to the nearest dollar, i.e., the odd cents .01 through .49 will be adjusted to the next lower dollar; .50 through 99 will be adjusted to the next higher dollar.

(6) Week of Unemployment. Unless otherwise authorized by the Commissioner, a week of unemployment shall be the calendar week beginning on Sunday and ending at midnight the following Saturday.

(7) The following definitions shall apply in the application of the disqualification provisions of OCGA Sections 34-8-194 and 34-8-195:

(a) "Bodily Injury" is physical harm, damage or injury inflicted on an individual by another individual.

(b) "Conscious Neglect" is a failure to use that degree of care which would be exercised by an ordinarily prudent person under the same or similar circumstances. It does not require a willful intent to abuse an employer's business but it does require a showing of disregard for the normal or acceptable consequences of the action or the failure to perform one's job duties. It is to be distinguished from the claimant's inability to satisfactorily perform the duties of the job. A showing by the employer that the claimant failed to perform a task for which the claimant had previously demonstrated a degree or level of proficiency by satisfactorily performing the task in the past will shift the burden of proof to the claimant to show that the individual had an inability to perform the task in question.

(c) "Fault" is a failure to follow rules, orders or instructions, or failure to discharge the duties for which the claimant was employed. Fault which is of a disqualifying nature cannot be a technical failing, a minor mistake or the mere inability to do the job. Rather, a breach of duty to constitute fault must take into consideration such factors as length of service, nature of duties, prior warnings, equal enforcement of all progressive discipline programs and any other factors which might be used to establish reasonable expectations that the discharge was imminent. The claimant must have been aware that a discharge would likely result from the violation of the rule. In the case of a discharge due to a violation of an employer's rule, order or instruction, an employer has the burden of proving that the claimant knew or should have known that the violation of the rule, order or instruction could have resulted in termination.

(d) "Full-time Employment" is normally considered to be at least thirty (30) hours of work in a week or such other number of hours as is normal in a particular industry. An individual who worked full-time during a majority of the weeks of work in the base period shall be expected to look for full-time employment and shall be expected to accept an offer to such work after filing an otherwise valid claim for benefits. An individual may accept Part-time Employment at any time as long as it does not unreasonably interfere with the individual's search for Full-time Employment, but the claimant must report gross earnings for such work to the Department.

(e) "Intentional Conduct" is that personal behavior or action by an individual which is willful, conscious or deliberate that results in damage to another person's property or results in bodily harm to another individual. A claimant who commits an act which a reasonably prudent person would contemplate to result in damage may be said to intend that result, whether he desired it or not; for every person is presumed to intend the natural consequences of his or her own actions.

(f) "Misconduct" is conduct evincing such willful or wanton disregard of an employer's interest as is found in violation or disregard of standards of behavior which the employer has the right to expect of an employee, or in carelessness or negligence in such degree, or recurrence as to manifest fault, or to show a disregard of the employer's interests or of the employee's duties and

obligation to the employer. Misconduct includes but is not limited to a violation of a known work rule which is reasonable and related to the job being performed.

(g) "Part-time Employment" shall be construed to be work which is other than Full-time Employment as defined above, without regard to whether it is of limited duration as to days, weeks or months. A claimant who worked part-time during a majority of the weeks of work in the base period must be available to work for at least 20 hours per week.

(h) "Physical Assault" is touching the person of another against his/her will with physical force, in an intentional, hostile or aggressive manner.

(i) "Suitable Work" means work in the individual's usual occupation or work for which the individual is reasonably fitted. In determining whether an individual is reasonably fitted for a particular job, the department shall consider the totality of circumstances, including, but not limited to:

1. The degree of risk involved to the claimant's health, safety and morals;
2. The claimant's physical fitness;
3. The claimant's prior training;
4. The claimant's experience;
5. The claimant's prior earnings;
6. The length of the claimant's unemployment;
7. If the work is not directly related to claimant's recent work experience, the claimant's prospects for obtaining local work in such claimant's customary occupation; and
8. The distance and time for commuting.

(j) "Theft" is the taking of an employer's property, or the property of any other employee or the property of any other person while on the employer's premises or otherwise within the scope of the employee's job duties, without the consent of the owner of the property, with the intent to deprive the owner of the value of the property, and to appropriate it for the use and benefit of the person taking the property. The value of the property taken shall be the fair market value at the time of replacement.

(8) "Personal services" mean work performed by an individual for personal remuneration. Work performed by an individual or sole proprietorship is presumed to be personal services unless otherwise exempted by the Employment Security Law or the Rules of the Georgia Department of Labor. Work performed by a corporation or a partnership does not meet the definition of personal services.

(9) "Rate buy down" with respect to voluntary contributions pursuant to OCGA Section 34-8-178 means the payment of such additional amounts in response to notice from the Department as to enable an employer to receive a lower rate of contributions.

(10) Most Recent Employer.

(a) "Most Recent Employer" as defined under OCGA 34-8-43 shall not include an employer subject to the provisions of the federal Railroad Unemployment Insurance Act.

(b) "Most Recent Employer" as defined by OCGA 34-8-43(a) shall mean the last employer for whom an individual worked and was separated.

(c) An entity must be an "Employer", as defined by OCGA 34-8-33, to qualify as an individual's "Most Recent Employer".

(11) "Deductible Earnings" means:

(a) For all claim weeks ending before July 8, 2023, all wages in excess of \$150.00 each week earned by a claimant for services performed, whether or not received by such claimant; and

(b) For all claim weeks ending on or after July 8, 2023, all wages in excess of \$50.00 each week earned by a claimant for services performed, whether or not received by such claimant.

Deductible earnings shall be subtracted from the weekly benefit amount of the claim.

(12) “Non-deductible Earnings” means all wages earned each week by a claimant less than or equal to the amount established by the Commissioner for Deductible Earnings

Authority: O.C.G.A. Secs. 34-2-6(a)(4), 34-8-30, 34-8-70, 34-8-190, 34-8-191, 34-8-193(e).

**RULES
OF
GEORGIA DEPARTMENT OF LABOR**

**CHAPTER 300-2
EMPLOYMENT SECURITY LAW**

**SUBJECT 300-2-4
UNEMPLOYMENT INSURANCE BENEFIT PAYMENTS**

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Rule 300-2-4-.01. Regular Unemployment Insurance Benefit Payments

Pursuant to the provisions of OCGA Sections 34-8-190, 34-8-191, and 34-8-195, filing claims:

(a) Total and part-total claims. Total and part-total claims must be filed by an individual in the manner specified by the department. Registration for work is required as directed by the department and failure to register may cause benefits to be withheld.

(b) Partial Claims (Employer Filed Claims).

(1) Employer filed claims must be filed by an employer in the manner specified by the department.

(2) A properly completed employer filed claim, shall constitute a claim for unemployment insurance benefits on behalf of an employee with respect to the week of partial unemployment covered by the claim.

(3) The employee may be required to complete an applicant profile, identity verification, and a weekly certification of eligibility to receive payment for a week of partial unemployment.

(3) Employer filed claims shall be filed by an employer no more than thirty (30) days from the end of the employer's payroll week during which an employee worked less than full-time.

(4) Upon failure of the employer to file an employer filed claim on behalf of an employee, such employee may file their own individual claim in the manner provided for Total Unemployment claims. Such a claim must be filed within sixty (60) days from the end of the employer's payroll week in which said employee worked less than full-time.

(5) The limitations imposed in subparagraphs (3) and (4) may, in the discretion of the Commissioner or the Commissioner's designee, be waived upon the showing of extenuating circumstances.

Authority: O.C.G.A. Secs. 34-2-6(a)(4), 34-8-70, 34-7-190.

Rule 300-2-4-.02. Registration of Claimants for Possible Referrals to Job Openings

(1) Claimants are required to register for screening and referral to employers who are currently offering employment (except as provided below). Unemployment benefits will cease to be payable unless registration has been completed as directed by the department.

(2) The department may notify claimants to give reports on work search activities and to receive job referrals. Unemployment benefits will cease to be payable for failure to give such reports, refusal of a job referral, or to take other such action as directed by the department.

(3) Exceptions to registration requirements are granted to qualified applicants who are:

(a) On short term layoff but who have a definite date of recall to their previous employment within six (6) weeks of the last day worked;

(b) Partial claimants as described in Section 300-2-4-.01 of these rules;

(c) Claimants who are attending training approved by the Commissioner;

(d) Members of unions who routinely and regularly receive all of their job referrals from so-called hiring halls or similar placement facilities and present evidence of:

1. Current union membership in good standing; and

2. Current registration with the union for job referrals; or

(e) Claimants involved in a strike or similar labor dispute, provided, however, claimants who have been locked out of their job must register with the department for possible job referrals if so directed by the department.

Authority: O.C.G.A. Secs. 34-2-6(a)(4), 34-8-70, 34-8-190, 34-8-191.

Rule 300-2-4-.03. Reporting Requirements on Claims

(1) Total and part-total claims. To request a week of unemployment insurance benefits after filing a claim, an individual shall complete a weekly certification of eligibility as directed by the department and otherwise report as directed by the department. To claim credit for weeks of unemployment subsequent to a claim filed pursuant to this Section, the claimant shall complete a weekly certification of eligibility as directed by the department and otherwise report as directed by the department.

(a) An individual must wait until a benefit week has ended to request a benefit payment for such week.

(b) An individual may request a week of benefit payments for up to two weeks.

(c) Failure to request a week of benefit payment on time will result in an individual being considered ineligible for benefits for that week.

(d) Failure to request three or more consecutive weeks of benefit payments may result in an individual being required to reopen their claim by filing a new application for benefits.

(2) Partial claims (Employer Filed Claims). To request a week of unemployment insurance benefits for which an employer has filed an employer filed claim on behalf of an individual, an individual shall complete a weekly certification of eligibility as directed by the department and otherwise report as directed by the department.

(3) For reasons found to constitute good cause, a claimant unable to report to the department as directed may be permitted to report within the two (2) day period following the date the claimant was directed to report. Good cause is defined as circumstances beyond the claimant's control, such as:

(a) An "act of God" or similar event which prevented the claimant from timely reporting;

(b) Death of an individual's immediate family member.

(i) The reporting requirements shall be waived for the day of the death and for four (4) consecutive calendar days thereafter.

(ii) As used in this rule, "immediate family member", means a spouse, child, stepchild, adopted child, grandchild, parent, grandparent, brother or sister of the individual or his or her spouse and the spouse of any of the foregoing; or

(c) Personal illness or disability of a temporary nature of claimant or a dependent family member which occurred in such a way to prevent the claimant from timely reporting, and the claimant made diligent efforts to give notice to the department prior to the time for the scheduled reporting date.

(4) Notwithstanding any provision of this rule, any notice of appeal must be filed within the time limitations specified in Chapter 5 of these rules.

Authority: O.C.G.A. Secs. 34-2-6(a)(4), 34-8-70, 34-8-190, 34-8-191.

Rule 300-2-4-.08. Overpayments

(1) An individual shall be required to repay an overpayment of unemployment compensation unless a written application for waiver is filed with the Department and approved by the Commissioner or the Commissioner's designee.

(2) An application for waiver shall not be accepted for any overpayment the Department determined was the result of fraud attributable to the individual.

(3) An application for waiver shall not be approved if it is filed later than fifteen (15) calendar days following the release date of the Notice of Overpayment, provided, however, that the time limitation may be extended upon a showing of extenuating circumstances which prevented the filing of a timely application for waiver by the individual and such circumstances were beyond the individual's control.

(4) The Commissioner or the Commissioner's designee shall notify each individual in writing whether the application for waiver of overpayment has been approved or denied. The decision of the Commissioner or the Commissioner's designee shall become final unless the individual appeals the decision within 15 days after the notice was mailed or otherwise delivered to the individual.

(5) The Department shall suspend collection of an overpayment while an application for waiver of the same overpayment is pending.

(6) An application for waiver of overpayment of unemployment compensation shall be approved only if:

(a) The individual is determined to be without fault in the cause of the overpayment, regardless of whether such fault rises to the level of fraud; and

- (b) Repayment of the overpayment is determined to be contrary to equity and good conscience.
- (7) Repayment of the overpayment shall be contrary to equity and good conscience if:
1. It would cause financial hardship to the person for whom waiver is sought;
 2. The recipient of the overpayment can show (regardless of their financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either they have relinquished a valuable right or changed positions for the worse; or
 3. Recovery would be unconscionable under the circumstances.
- (8) An application for waiver of overpayment shall specify why the individual was without fault in the cause of the overpayment and why repayment would be contrary to equity and good conscience, including supporting documentation.
- (9) The Department shall consider each individual's waiver application separately on its own merits, with due consideration of the facts and circumstances of each individual case. When authorized by federal law and regulations, and when it would not create a federal conformity issue, the Department may approve blanket waivers for groups of similarly situated individuals.
- (10) Upon approval of an application for waiver, the Department shall refund any amounts that were collected towards the applicable overpayment prior to such approval, except when prohibited by state or federal law.
- (11) A waiver of an unemployment insurance overpayment may be issued by the department in whole or in part upon the finding of a court of law having proper subject matter jurisdiction which rules that error existed in the information utilized to establish such overpayment, whether or not such overpayment was determined to be fraudulent in nature. Additionally, if a court finds repayment of an overpayment should be waived by virtue of discharge in bankruptcy under federal bankruptcy law, waiver will be granted.
- (12) This rule shall apply to overpayments of all federal or state unemployment compensation programs administered by the Department, but only to the extent this rule is consistent with federal law and regulations, and would not create a federal conformity issue. An application for waiver of an overpayment of unemployment compensation shall not be approved when waiver would be prohibited by federal law or regulation, regardless of an individual's fault.
- (13) Covid-19 Pandemic Overpayment Provisions.

(a) For any Notice of Overpayment that established an overpayment for one or more claim weeks ending February 8, 2020, through June 26, 2021, the fifteen (15) day time limitation to file an application for waiver of overpayment may, in the discretion of the Commissioner or the Commissioner's designee, be waived.

(b) An individual whose application for waiver of overpayment was denied prior to April 15, 2022, for failure to file a timely application for waiver of overpayment may request a redetermination; provided, however, that only overpayment weeks ending February 8, 2020, through June 26, 2021, shall be eligible for redetermination. A redetermination with respect to eligible weeks shall be made in accordance with the provisions of this rule.

Authority: O.C.G.A. Secs. 34-2-6(a)(4), 34-8-70(b), 34-8-254(c).

Rule 300-2-4-.09. Partial Unemployment

(1)(a) Employer filed partial unemployment claims may be filed by an employer with respect to any complete pay-period week during which an otherwise full-time employee works less than full-time, due to lack of work only, and earns an amount not exceeding the individual's unemployment insurance weekly amount, if known, plus Non-deductible Earnings or earns an amount not exceeding the maximum weekly benefit amount provided in the Employment Security Law, plus Non-deductible Earnings, if the individual's unemployment insurance weekly benefit is not known. Employer filed partial unemployment claims shall not be submitted or allowed for vacation days regardless of whether such vacation days were requested by the employee or established by the employer.

(b) For partial claim weeks beginning on or after December 11, 2016, the limitation on employer filed partial unemployment claims set forth in the last sentence of subparagraph (1)(a) shall not apply during an employer company shutdown or employer established vacation period when such shutdown or vacation period is due to circumstances outside the employer's control which directly affect the employer's business operations.

(c) An employer filing employer filed partial unemployment claims must have a positive reserve account as that term is used in O.C.G.A. Section 34-8-155; provided, however, the positive reserve account requirement shall not apply to partial claims filed for partial claim weeks beginning on or after December 11, 2016.

(2) Payments shall be made for partial unemployment only upon the approval by the Commissioner. Approval shall be based upon consideration of the conditions set forth in these regulations.

(a) The employer shall complete an affidavit in such form as approved by the Commissioner with respect to the employer filed partial unemployment.

(b) Normally, employers who have over twenty-five (25) employees affected by the partial unemployment may have such partial unemployment approved.

(c) Such unemployment must have been directly caused by lack of work and no other issues as to entitlement of unemployment benefits may be present. If other issues are involved, the employee will be required to file their own individual claim for benefits.

(d) Employer filed partial unemployment claims may only be filed for employees engaged in Full-time Employment. Employees engaged in Part-time Employment must file their own individual claim for benefits.

(e) The Commissioner may provide for the filing of employer filed partial unemployment claims online and require the filing of all employer filed partial unemployment claims online.

(f) An employee may be required to complete a weekly certification of eligibility to receive payment for a week of partial unemployment.

(3) Six (6) consecutive weeks of total unemployment immediately following a week of full-time or part-time employment may be claimed by an employer.

(4) Following those six (6) consecutive weeks of total unemployment, an employer who requests permission and shows justifiable cause may, upon approval of the Commissioner, file employer filed partial unemployment claims for four (4) additional weeks of total unemployment, provided

the employer provides a firm return to work date for such employees within the four (4) week time period.

(a) The employer shall immediately advise the employee to report to the Department for the purpose of registering for work and reporting on his or her claim upon the earliest of:

1. The employer being unable to provide a firm return to work date;
2. The expiration of the approved time period for acceptance of employer filed partial employment claims passes; or
3. The employer ceases filing employer filed partial unemployment claims for any totally unemployed worker.

(b) Employers are not authorized to file partial unemployment claims for regular breaks in seasonal employment. Employer filed partial unemployment claims may be filed when unusual circumstances require a break in employment at a time of normal, non-seasonal work.

(c) Any employer found by the Commissioner to be abusing the purpose and intent of the employer filed partial claims program or found to have filed a fraudulent employer filed partial claim shall, in the discretion of the Commissioner or the Commissioner's designee, be restricted from filing employer filed partial claims and any employer filed partial claims previously filed by the employer may be cancelled. In addition to any applicable criminal penalties, the Department may require repayment by the employer of any amounts paid for fraudulent employer filed partial unemployment claims filed by the employer.

(5) Because employer filed partial unemployment claims are employer-initiated claims based upon lack of work, such employers will not receive Form DOL-1199FF (notice of initial claim) with respect to these claims. The employer will receive its quarterly notification of charges against its account as provided by O.C.G.A. Section 34-8-157(d) and O.C.G.A. Section 34-8-159(4), provided, however, such employer will be furnished notice of the approval by the Department of the initial employer filed partial claims.

(6) A new employer shall not be permitted to file employer filed partial claims within 180 days of registering an account with the Department.

(7) An employer with delinquent quarterly tax and wage reports or delinquent taxes, assessments, penalties, or interest owed to the Department for unemployment insurance shall not be permitted to file employer filed partial claims.

(8) In the discretion of the Commissioner, the limitations on employer filed partial claim filing set forth in paragraphs (6) and (7) may be waived.

Authority: O.C.G.A. Secs. 34-2-6(a)(4), 34-8-47, 34-8-70, 34-8-190.