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Fast-Track Regulation Agency Background Document

Agency name	Virginia Employment Commission
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 5-32-20
VAC Chapter title(s)	Required Records and Reports
Action title	Amendment to the Required Records and Reports for Virginia Employers
Date this document prepared	3/14/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This is an amendment to an existing regulation. It will add a section to the records and reports employers are required to provide or keep. The change will add the requirement for employers to provide notification to workers at the time of separation of the availability of unemployment compensation. Under federal law and US DOL guidelines, the VEC is required to make this a requirement for employers.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

US DOL – United States Department of Labor

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

Date Action Take: March 14, 2024
Agency: Virginia Employment Commission
Title: Required Reports

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Families First Coronavirus Response Act
Emergency Unemployment Insurance Stabilization and Access Act of 2020 (UIPL No. 13-20)
“The state requires employers to provide notification of the availability of UC to employees at the time of separation from employment...”

The action is not expected to be controversial as the VEC currently has the requirement of a mandatory posting for employers (Notice to Workers VEC B-29), that explains how employees who have been laid-off, may file for unemployment insurance benefits. This change to the regulations will simply require employers to physically provide the same information to employees, at the time of their separation from employment.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Virginia Employment Commission
Code of Virginia § 60.2-111(A)

A. It shall be the duty of the Commission to administer this title. The Commission may establish separate divisions as necessary to carry out the duties and powers prescribed by this section. It shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action, including the appointment of advisory groups, as it deems necessary or suitable to that end. Such rules and regulations shall be subject to the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, except as to the subject matter of subdivisions 2 and 3 of § 60.2-515, which shall become effective in the manner prescribed by § 2.2-4103.

Code of Virginia § 60.2-115(A)

A. In the administration of this title, the Commission shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this title. The Commission shall make such reports, in such form and containing such information as the United States Department of Labor may require, and shall comply with such provisions as the United States Department of Labor may find necessary to assure the correctness and verification of such reports. The Commission shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this Commonwealth and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act (29 U.S.C. § 49 et seq.), and the Federal-State Extended Unemployment Compensation Act 2

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The notification by employers is required by federal law. During the pandemic, the first legislation passed by Congress, was the Families First Coronavirus Response Act. Within this legislation was the Emergency Unemployment Insurance Stabilization and Access Act of 2020, which required states, as a condition of the grant award, to have employers provide notice of Unemployment Services to employees at the time of separation from employment. This notification is intended to make those individuals who become unemployed aware of the availability of unemployment benefits. The notice provides information to potential claimants regarding the process for claiming unemployment benefits. The regulation will require employers to personally provide this information to those who are separated from employment, whereas it is currently only required to be posted within the employer's offices.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulation will change 16 VAC 5-32-20 to add a subsection F which will stipulate the requirement to provide separated employees the same information that is currently required to be posted by the employer. Per the regulation, employers will be required to give separated employees the notice physically or via email at the time of separation from employment.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. The advantages to private citizens will be to provide them with helpful information for filing for unemployment benefits. The advantages to employers will be that employees may have more accurate and timely unemployment claims for determining their eligibility for benefits.
2. The advantage to the agency will be to have timelier and more accurate claims for unemployment, which could result in better decisions and fewer appeals regarding unemployment claims/decisions.
3. There are no disadvantages to the public or Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity will be particularly affected by the regulation.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>N/A</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the</p>	<p>N/A</p>

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Informed claimants will likely result in more complete and timelier claims for benefits which will allow for better decisions and fewer appeals.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	N/A
Benefits the regulatory change is designed to produce.	N/A

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Tax paying employers Claimants
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	All tax paying employers
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs associated with the regulation. The VEC will provide a copy of the notice to employers and it can be given in a physical copy or via email to separated employees.
Benefits the regulatory change is designed to produce.	N/A

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the

regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no alternatives to the regulatory change as it is required under federal law and on condition of funding by the US DOL.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Enter statement here

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The [Virginia Employment Commission] is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Ashley Ervin, Director of Policy and Legislative Affairs, 6606 W. Broad St., Richmond, VA 23230; (804) 774-2713; ashley.ervin@vec.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
16 VAC 5-32-20	Sub-section F	Employers are required to maintain and report quarterly information regarding the number and wages of all employees	The additional subsection F will require employers to provide separated employees with a document that explains the availability of unemployment insurance benefits. This is to ensure all persons who are separated from employment are aware of how to access these benefits should they need them. The intent of the requirement is to comply with federal law and to ensure citizens have access to the benefits available to them. The impact is likely to be in the form of timelier and more informed claims for benefits which will allow the VEC to better process claims.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage



NOTICE TO WORKERS

Unemployment Insurance (UI) benefits are available to workers who are unemployed and who meet the requirements of Virginia UI eligibility laws. You may file a UI claim in the first week that employment stops or work hours are reduced.

YOU MAY APPLY FOR UNEMPLOYMENT INSURANCE BENEFITS IF:

- You are totally unemployed.
- You are working reduced wages or hours.

YOU WILL NEED TO PROVIDE:

- Your full legal name
- Your Social Security Number
- Your authorization to work (if you are not a US Citizen or resident)

IF TOTALLY UNEMPLOYED, ON A TEMPORARY LAYOFF, OR IF WORKING REDUCED HOURS:

The first week you are unemployed, register for work, and file a claim for benefits. You can file your claim online at www.vec.virginia.gov or by calling our Customer Contact Center at 1-866-832-2363. Register for work online at www.vawc.virginia.gov.

TO BE ELIGIBLE FOR BENEFITS, THE LAW REQUIRES THAT YOU:

- File a claim with the Virginia Employment Commission.
- Have earned sufficient wages from employers who are subject to the Virginia Unemployment Compensation Act or any other State within your Base Period.
- Must be unemployed through no fault of your own.
- Must be able and available for work and actively searching for work.
- Continue to report as instructed by the Virginia Employment Commission.

You cannot be paid unemployment benefits until you have filed your claim and have met all eligibility requirements. You should file your claim as soon as you become unemployed, or your hours are reduced. If you have any questions about your rights and responsibilities under the Virginia Unemployment Compensation Act, visit website www.vec.virginia.gov or call our Customer Contact Center at 1-866-832-2363.

THE LAW REQUIRES EMPLOYERS TO POST THIS NOTICE IN A PLACE VISIBLE TO ALL WORKERS.

EFFECTIVE MARCH, 14, 2024, EMPLOYERS MUST ALSO PROVIDE A COPY OF THIS NOTICE TO EACH WORKER AT THE TIME OF SEPARATION FROM EMPLOYMENT ([42 USC, §1103 \(h\)\(2\)](#)).

An Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities. Please call 866-832-2363 or
Email: translation@vec.virginia.gov for Language Access/Assistance.

This notice is available in Spanish.
Direct requests to: **Employer Accounts**
P.O. Box 26441
Richmond, VA 23261-6441