

DECLARATION OF EMERGENCY

Louisiana Workforce Commission Office of Unemployment Insurance Administration

**Emergency Rule— Invocation of the Statutory Savings Clause Under La. R.S. 23:1664 to
Delay Implementation of Act 297 of the 2021 Regular Legislative Session
(LAC 40:IV.385)**

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 delay implementation of the provisions of Act 297 of the 2021 Regular Legislative Session (the enacted version of SB 244), that are inconsistent with Federal UI law, namely La. R.S. 23:1772(C), 23:1774(4), and any other related provision that requires LWC to waive UI taxes owed. The USDOL provided the LWC with notice that waiving employer liability for back UI taxes is “not permissible under federal unemployment compensation (UC) law.”

This Emergency Rule is necessary to invoke the statutory savings clause under La. R.S. 23:1664, which addresses federal-state cooperation and compliance in the administration of Louisiana’s UC program. A delay in promulgating this Rule would have an adverse impact on the Louisiana Workforce Commission’s eligibility for federal funding because Act No. 297, which was signed into law by the Governor on June 14, 2021, and is effective on January 1, 2022, is not in conformity with 26 U.S.C. §3304 of the Federal Unemployment Tax Act (FUTA) and 42 U.S.C. §503, the State Unemployment Tax Act (SUTA) Dumping Prevention Act, as required under La. R.S. 23:1664. It is imperative that the LWC proceed expediently and take immediate action with this Rule because of the adverse impact COVID-19 has had on the UC trust fund balance and businesses in the state. It is also imperative that the LWC promulgate this Rule to prevent imminent peril to the public health, safety, and welfare. Failure to adopt this Rule on an emergency basis may imperil LWC’s ability to receive federal funding for failure to meet conformity requirements.

This declaration of emergency is effective November 8, 2021, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, La. 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

§385. Invocation of the Statutory Savings Clause Under La. R.S. 23:1664 to Delay Implementation of Act No. 297 of the 2021 Regular Legislative Session

A. Pursuant to the Fresh Start Proper Worker Classification Initiative and the Louisiana Voluntary Disclosure program under Act No. 297 (the enacted version of SB 244), employer liability for SUTA dumping penalties and fraud penalties is waived under the safe harbor provision. However, employer liability for SUTA dumping penalties and fraud penalties must not be waived under 26 U.S.C. §3304 of the Federal Unemployment Tax Act (FUTA) and under 42 U.S.C. §503, the State Unemployment Tax Act (SUTA) Dumping Prevention Act. The enactment of Act No. 297 would also require the Louisiana Workforce Commission to waive employer liability for back UI taxes. Waiving employer liability for back UI taxes is not permissible under federal unemployment compensation (UC) law and regulations. Pertinent provisions of Act No. 297 are not in conformity with federal law and regulations. The LWC only seeks to delay the provisions that are inconsistent with Federal UI law, namely R.S. 23:1772(C), 23:1774(A)(4), and any other related provision that requires the LWC to waive UI taxes owed. The LWC does not seek to delay enactment of the portion of Act No. 297 that pertains to employee misclassification. Pursuant to La. R.S. 23:1664, which addresses federal-state cooperation and compliance in the administration of Louisiana's UC program and 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, the Louisiana Workforce Commission seeks to invoke the savings clause under La. R.S. 23:1664 and delay implementation of Act No. 297 until the statute is amended during the 2022 Regular Legislative Session. A delay in promulgating this Rule would have an adverse impact on the LWC's eligibility for federal funding because Act No. 297 is not in conformity with federal UC law.

AUTHORITY NOTE: Promulgated in accordance with Act No. 297, La. R.S. 23:1664, La. R.S. 36:310, 26 U.S.C. §3304 and 42 U.S.C. §503.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Unemployment Insurance Administration, LR 47:

Inquiries concerning the proposed enactment may be sent to Assistant Secretary Robert Wooley, UI Administration, 1001 North 23rd Street, Baton Rouge, LA 70802 or at Rwooley@lwc.la.gov


9/9/21
Ava Cates
Secretary