

**NORTH CAROLINA DEPARTMENT OF COMMERCE
DIVISION OF EMPLOYMENT SECURITY**

Interoffice Communication

Date: September 17, 2024

TO: Holders of Interpretation Manual, All Directors, Adjudicators and Appeals Referees

FROM: R. Glen Peterson, Chief Counsel

SUBJECT: DES Interpretation No. 275

Pursuant to 2011 N.C. Sess. Laws 401, the Employment Security Commission of North Carolina became the North Carolina Department of Commerce, Division of Employment Security (“DES”) on November 1, 2011. Interpretations adopted prior to the amendments made by 2011 N.C. Sess. Laws 401 which were effective on that date continue to apply and should be construed as Interpretations of the Division.

In accordance with DES Interpretation No. 252, the attached DES Interpretation No. 275 has been adopted as an official interpretation by the North Carolina Department of Commerce, Division of Employment Security. “Interpretations issued by the Chief Counsel on behalf of [DES] will continue to be considered as a written interpretation or legal opinion of [DES] and shall be continued to be considered as a precedent in all issues considered in the written interpretation.” DES Interpretation No. 252. The attached material is relevant and suitable to be an interpretation of the Employment Security Law, and as such, it shall be distributed to all holders of interpretation manuals, all directors, all adjudicators, and all appeals referees. Also attached is a current index of the Division’s Interpretations. All of the foregoing materials shall be incorporated into the official DES website section on Laws & Rules at <https://www.des.nc.gov/laws-rules/legal-information/interpretations-manual>

Any questions about this Interpretation should be directed to the office of the Chief Counsel at (984) 236-5987.

**NORTH CAROLINA DEPARTMENT OF COMMERCE
DIVISION OF EMPLOYMENT SECURITY**

DES INTERPRETATION NO. 275

TO: North Carolina Department of Commerce, Division of Employment Security

FROM: R. Glen Peterson, Chief Counsel

SUBJECT: Plain language determinations and decisions using “qualified,” “disqualified,” “eligible,” and “not eligible”

In mid-2022, the Division of Employment Security (Division) was awarded an equity grant, one focus of which was to “improve the language on the Division’s external-facing channels, such as the Division’s website, SCUBI [MyNCUIBenefits] portals, and correspondences.”¹ Correspondences include the notices that the Division sends out to those using its services and determinations and decisions issued to claimants and employers as to the receipt of unemployment insurance benefits. These determinations and decisions typically refer to whether a claimant will receive benefits based on his or her separation from employment;² failure without good cause pursuant to N.C. Gen. Stat. § 96-14.11 to either: (1) apply for available suitable work when so directed by the employment office of the Division; (2) accept suitable work when offered; or (3) return to the individual’s customary self-employment when so directed by the Division; whether the claimant meets the weekly certification requirements set forth under N.C. Gen. Stat. § 96-14.9 of the Employment Security Law; or is employed or unemployed under N.C. Gen. Stat. § 96-15.01.

Until now, the aforementioned determinations and decisions were written in terms of whether the claimant was “disqualified” or “not disqualified” for benefits based on the claimant’s separation from employment or based on the claimant’s compliance with N.C. Gen. Stat. § 96-14.11. Determinations were written in terms of whether the claimant was “eligible,” “not eligible,” or “ineligible” based on his or her compliance with N.C. Gen. Stat. §§ 96-14.9 and 96-15.01. The terms used are clearly based on the way the statutory provisions are written. For example, N.C. Gen. Stat. § 96-14.6(a) reads as follows:

¹ The Messenger, Your DES Employee Newsletter, December 6, 2023.

² Separation issues typically (but not exclusively) arise under N.C. Gen. Stat. §§ 96-14.5, 96-14.6, 96-14.7 and 96-14.8.

“Disqualification. – An individual who the Division determines is unemployed for misconduct connected with the work is disqualified for benefits. The period of disqualification begins with the first day of the first week the individual files a claim for benefits after the misconduct occurs.”

Since the statute states that an individual determined to be unemployed for misconduct connected with the work is “disqualified” for benefits, it was reasonable to conclude that one who was not discharged for misconduct is “not disqualified” for benefits. This may be a legally understandable result, but research has also shown that use of the terms “not disqualified” or “ineligible” can be confusing.

Deloitte, a professional services network, “conducted research and analysis using the Division’s administrative data, holding a focus group and conducting a usability test in October 2023.”³ The research centered on claimants who identified as having limited English proficiency (LEP)⁴ and spoke Spanish as their native language. One of the challenges or barriers that Deloitte identified regarding an LEP individual’s understanding of the unemployment insurance claims process was difficulty understanding complex languages.

Deloitte stated that “The phrase ‘claimant is not disqualified for benefits’ confused the LEP claimants. They requested plainer language in English to facilitate a clearer understanding of the messages they received so they could better comprehend what their next steps might be.”⁵

The call for plain language is also contained in the North Carolina Department of Commerce, Division of Employment Security & Division of Workforce Solutions Limited English Proficiency Plan. Not only does this ensure that language is more understandable to LEP individuals, but it also makes the information accessible to a wider range of literacy levels, whether the individual is LEP or not. The Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (2010) (codified at 5 U.S.C. § 301 note), indicates that States should ensure that all communications are written to accommodate different literacy levels.

A sentence including the phrase “qualified for benefits” was found to be easier to understand than the same sentence with the phrase “not disqualified for benefits”

³ North Carolina Division of Employment Security Equity Grant Project, Limited English Proficiency (LEP) Barriers Brief, March 14, 2024.

⁴ Pursuant to 29 CFR § 38.9, discrimination is prohibited based on national origin including limited English proficiency.

⁵ North Carolina Division of Employment Security Equity Grant Project, Limited English Proficiency (LEP) Barriers Brief, p. 10, March 14, 2024.

according to the Flesch-Kincaid Grade Level test.⁶ Similarly, a sentence using “not eligible for benefits” was easier to understand than the same one using “ineligible for benefits.”⁷

Consistent with the guidance cited within this interpretation, all determinations, decisions, and other communications issued by the Division from this date forward shall use the preferred terms “**disqualified**”⁸ or “**qualified**” (when addressing whether the individual is disqualified for benefits, depending upon whether the applicable statutory provision has or has not been met); or “**eligible**” or “**not eligible**” when those parts of the statute are applied addressing an individual’s eligibility to receive benefits. Use of the terms “not disqualified” or “ineligible” will not invalidate a determination or a decision but are not preferred and should be avoided.

For example, when stating that the applicable statutory provision to disqualify an individual from receiving unemployment insurance benefits has not been met, instead of using the phrase “Claimant is *not disqualified* and will receive unemployment insurance benefits beginning [...],” the Division will use the phrase “Claimant is *qualified* and will receive unemployment insurance benefits beginning [...]”.

Similarly, when addressing an individual’s eligibility to receive benefits, if a provision of the applicable statute deems the individual not eligible to receive benefits, instead of using the phrase “Claimant is *ineligible* for unemployment benefits beginning [...],” the Division will use the phrase “Claimant is *not eligible* for unemployment benefits beginning [...]”.

Adopted as an official Interpretation by the North Carolina Department of Commerce, Division of Employment Security on September 17, 2024 and is applicable to all Division claims and/or appeals determinations and decisions issued as of that date.

⁶ “Qualified for benefits” = 7.6 grade level; “Not disqualified for benefits” = 8.3 grade level.

⁷ “Not eligible for benefits” = 8.3 grade level; “Ineligible for benefits” = 12.3 grade level.

⁸ “Disqualified” will continue to be the preferred term in lieu of “not qualified” because it is used throughout the Employment Security Law to describe when a claimant is prevented from receiving benefits in a separation or similar situation and it is historically recognized.

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