

## **Adequacy**

### **What is Adequacy?**

Adequacy is the process by which employers' responses to Requests for Separation Information for employer are evaluated to determine whether an employer has established a pattern of failing to respond timely or adequately. A timely response is one that is received by the Division by the Response Due Date listed on the letter. The due date will be fourteen (14) calendar days from the date of initial mailing to the employer. An adequate response is one that contains sufficient facts to allow the Division to make a correct initial determination under the law. An employer who establishes a pattern of failing to respond timely or adequately may not be relieved of charges resulting from erroneous benefit payments.

### **How is a pattern established?**

An employer establishes a pattern of failing to respond timely or adequately to Requests for Separation Information from Employer if that employer fails to respond timely or adequately to two (2) or two percent (2%), whichever is greater, of the total requests made to that employer during the reporting cycle. The reporting cycle begins August 1st each year and ends July 31st of the following year. An employer who establishes a pattern will receive an Adequacy Threshold Determination.

### **When will my account be affected?**

Simply establishing a pattern of failing to respond timely or adequately to Requests for Separation Information from Employer during the reporting cycle will not affect your account. Your account will not be affected unless you have established a pattern during the reporting cycle and have a subsequent untimely or inadequate response during a corresponding charging cycle that results in an improper payment being released to the claimant. The corresponding charging cycles are the four calendar quarters following the prior reporting cycle.

### **How will my account be affected?**

An employer who establishes a pattern of failing to respond timely or adequately to Requests for Separation Information from Employer during the reporting cycle, will be subject to penalties for untimely or inadequate responses during each corresponding charging cycle. If, during a corresponding charging cycle, the Division initially rules in the claimant's favor and benefits are paid out and charged against the employer's account on a claim where the employer fails to respond timely or adequately to a Response for Separation Information from Employer and that determination subsequently is reversed in the employer's favor on appeal, the employer will not be relieved of these charges. The benefits paid out prior to the reversal of the decision on appeal will be deemed improper payments. An employer who is penalized will receive an Adequacy Penalty Determination and the corresponding charges also will be reflected on the employer's quarterly and annual charging statements.

### **How can establishing a pattern be prevented?**

The simplest way to avoid establishing a pattern and subsequently being assessed any penalties is by responding timely and adequately to all Requests for Separation Information from Employer. A timely

response is one received within the 14-day period listed on the Request for Separation Information from Employer. An adequate response is one that sufficiently satisfies the request and provides enough facts for DES to make a correct legal determination without having to contact the employer to obtain additional information. This may include providing copies of relevant handbooks, policies, warnings, recordings, documents, or other information.

**If a pattern has been established, how can penalties be avoided?**

When a pattern has been established, penalties can be avoided during each corresponding charging cycle by responding timely and adequately to all Requests for Separation Information from Employer. At the same time, these responses will be evaluated as part of the next reporting cycle, which in turn will determine whether the employer has again established a pattern that could result in charges during the corresponding charging cycles.

**How can a Threshold Determination be contested?**

An employer may protest an Adequacy Threshold Determination by filing a written request with DES's Benefit Charging Unit:

Mail: Post Office Box 25903, Raleigh, North Carolina 27611-5903  
Fax: 919-733-1126

E-mail: [des.ui.charging@ncommerce.com](mailto:des.ui.charging@ncommerce.com) (<mailto:des.ui.charging@ncommerce.com>)

The request must contain the employer's name, address, and account number; the name, address, and title of the person making the request; and a statement of the reason for the request. The protest must be filed within 15 days of the date that the determination was mailed to the employer. The Benefit Charging Unit will review the request and issue a written determination. There is no further right of appeal from this determination.

**How can a penalty determination be contested?**

An employer may protest an Adequacy Penalty Determination by filing a written request with DES's Benefit Charging Unit:

Mail: Post Office Box 25903, Raleigh, North Carolina 27611-5903  
Fax: 919-733-1126

E-mail: [des.ui.charging@ncommerce.com](mailto:des.ui.charging@ncommerce.com) (<mailto:des.ui.charging@ncommerce.com>)

The request must contain the employer's name, address, and account number, the name, address, and title of the person making the request, and a statement of the reason for the request. The protest must be filed within 15 days of the date that the determination was mailed to the employer. The Benefit Charging Unit will review the request and issue a written determination. An employer may appeal an unfavorable determination to the Board of Review. Appeals must be filed with the Benefit Charging Unit using one of the methods listed above within 15 days of the date that the determination was mailed to the employer.