

26 §1194. CLAIMS FOR BENEFITS

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1. Filing. Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of the regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of those regulations. The printed statements shall be supplied by the commissioner to each employer without cost to him.

1-A. Partial unemployment claim forms. An employer shall issue a properly completed partial unemployment claim form to each of the employer's employees who is customarily employed full time and who is given less than full-time hours during a week due to a lack of work, or who is given no work for one week due to a lack of work and who is not separated from that employer.

A. Partial unemployment claim forms for a week must be provided to eligible employees no later than the day that the payroll for that week is available to employees. [1999, c. 376, §1 (NEW).]

B. An employer who fails to provide a partial unemployment claim form in accordance with this subsection is subject to a fine of \$25 per day per form for each day the form is late. [1999, c. 376, §1 (NEW).]

C. An employer is not required to issue a partial unemployment claim form to an employee:

(1) Whose earnings or earnings plus holiday pay for the week exceed the maximum weekly benefit amount plus \$5; or

(2) Whose vacation or holiday pay for the week exceeds the maximum weekly benefit amount. [1999, c. 376, §1 (NEW).]

D. The Director of Unemployment Compensation may authorize the use of partial unemployment claim forms for periods of 2 or more consecutive weeks in which the employee is given no work. [1999, c. 376, §1 (NEW).]

[1999, c. 376, §1 (NEW) .]

2. Determination. A representative designated by the commissioner, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during that benefit year in accordance with section 1192, subsection 5.

The deputy shall promptly examine all subsequent claims filed and, on the basis of facts, shall determine whether or not that claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer that claim or any question involved in the claim to the Division of Administrative Hearings or to the commission, which shall make a determination with respect to the claim in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits is subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the Director of Unemployment Compensation upon the basis of which the director shall notify appropriate deputies as to the applicability of that subsection.

The deputy shall determine in accordance with section 1221, subsection 3, paragraph A, the proper employer's experience rating record, if any, against which benefits of an eligible individual must be charged, if and when paid.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons for the determinations. Subject to subsection 11, unless the claimant or any such interested party, within 15 calendar days after that notification was mailed to the claimant's last known address, files an appeal from that determination, that determination is final, except that the period within which an appeal may be filed may be extended, for a period not to exceed an additional 15 calendar days, for good cause shown. If

new evidence or pertinent facts that would alter that determination become known to the deputy prior to the date that determination becomes final, a redetermination is authorized, but that redetermination must be mailed before the original determination becomes final.

If an employer's separation report for an employee is not received by the office specified on the separation report within 10 days after that report was requested, the claim must be adjudicated on the basis of information at hand. If the employer's separation report containing possible disqualifying information is received after the 10-day period and the claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date of the revised decision do not constitute an overpayment of benefits. Any benefits paid after the date of the revised decision constitute an overpayment.

If an employer files an amended separation report or otherwise raises a new issue as to the employee's eligibility or changes the wages or weeks used in determining benefits that results in a denial of benefits or a reduction of the weekly benefit amount, the benefits paid prior to the date the determination is mailed do not constitute an overpayment. Any benefits received after that date to which the claimant is not entitled pursuant to a new determination based on that new employer information constitute an overpayment.

If, during the period a claimant is receiving benefits, new information or a new issue arises concerning the claimant's eligibility for benefits or which affects the claimant's weekly benefit amount, benefits may not be withheld until a determination is made on the issue. Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which must include the issue to be decided, the law upon which it is based, any factual allegations known to the bureau, the right to a fact-finding interview, the date and location of the scheduled interview and the conduct of the interview and appeal. The fact-finding interview must be scheduled not less than 5 days nor more than 14 days after the notice is mailed. The bureau shall include in the notice a statement notifying the claimant that any benefits paid prior to the determination may be an overpayment under applicable law and recoverable by the bureau if it is later determined that the claimant was not entitled to the benefits. If the claimant does not appear for the scheduled interview, the deputy shall make a determination on the basis of available evidence. The deputy shall make a prompt determination of the issue based solely on any written statements of interested parties filed with the bureau before the interview, together with the evidence presented by interested parties who personally appeared at the interview. Upon request and notice to all parties at the interview, the deputy may accept corroborative documentary evidence after the interview. In no other case may the deputy base a decision on evidence received after the interview has been held.

A. This subsection does not apply when the claimant reports that, in the week claimed:

- (1) The claimant worked and reports a specific amount of earnings for that work;
- (2) The claimant worked and had earnings from that work, but does not furnish the amount of earnings;
- (3) The claimant reports that the claimant was not able or available for work for a specific portion of the week and there is sufficient information for the deputy to determine that the inability or unavailability for work was for good cause. If the information provided by the claimant indicated unavailability during the claim week, but is not specific as to the amount of time involved, the department shall immediately initiate a fact-finding interview with the individual and make a determination regarding the claimant's weekly benefit amount on the basis of that interview. If the department is not able to conduct an immediate fact-finding interview with the claimant, the notification and fact-finding process described in this subsection must be followed; or
- (4) The claimant received a specific amount of other remuneration as described in section 1193, subsection 5. [2003, c. 163, §1 (AMD).]

B. [1999, c. 464, §8 (RP).]

[2003, c. 163, §1 (AMD) .]

3. Appeals. Unless such appeal is withdrawn, the Division of Administrative Hearings after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or set aside the findings of fact and decision of the deputy. The parties shall be then duly notified of the division's decision, together with its reasons therefor, which subject to subsection 11 shall be deemed to be the final decision of the commission unless, within 15 calendar days after that notification was mailed to his last known address, the claimant and employer may appeal to the commission by filing an appeal in accordance with such rules as the commission shall prescribe, provided that the appealing party appeared at the hearing and was given notice of the effect of the failure to appear in writing prior to the hearing.

[1987, c. 641, §8 (AMD) .]

4. Appeal tribunals.

[1987, c. 641, §9 (RP) .]

5. Commission review. The commission may on its own motion affirm, modify or set aside any decision of the Division of Administrative Hearings on the basis of the evidence previously submitted in that case or direct the taking of additional evidence, or may permit any of the parties of that decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of the Division of Administrative Hearings and by the deputy whose decision has been overruled or modified by the Division of Administrative Hearings. The commission may remove to itself or transfer to the chief administrative hearing officer or to another administrative hearing officer the proceedings on any claim pending before the Division of Administrative Hearings. Any proceedings so removed to the commission shall be heard in accordance with the requirements in subsection 3. All hearings conducted pursuant to this section may be heard by a quorum of commissioners, as defined in section 1081, subsection 3. The commission shall promptly notify the interested parties of its findings and decisions.

[1987, c. 641, §10 (AMD) .]

6. Procedure. The manner in which disputed claims shall be presented, and the reports thereon required from the claimant and from employers shall be in accordance with regulations prescribed by the commission. The conduct of hearings and appeals shall be in accordance with Title 5, section 8001 et seq.

[1977, c. 694, §474 (RPR) .]

7. Witness fees. Notwithstanding the provisions of Title 5, section 9060, witnesses subpoenaed pursuant to this chapter shall be allowed fees at a rate fixed by the commission to be paid out of the Employment Security Administration Fund, except that no attendance or mileage fee shall be due or payable when a subpoena is issued to compel an employing unit to appear and produce records and reports for the purpose of making a determination as to liability or for the purpose of completing routine reports as provided under this chapter.

[1977, c. 694, §475 (AMD) .]

8. Appeals to courts. Any decision of the commission becomes final 10 days after receipt of written notification and any person aggrieved by the decision may appeal by commencing an action pursuant to Title 5, chapter 375, subchapter VII. The commission must be made a party defendant in any such appeal.

[1991, c. 2, §99 (COR) .]

9.

[1979, c. 541, Pt. A, §182 (RP) .]

10. Determination may be reconsidered; appeal. The deputy may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if the deputy finds that an error has occurred or that wages have been erroneously reported, but no such redetermination may be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon that redetermination, an appeal solely with respect to the matters involved in that increase may be filed in the manner and subject to the limitations provided in subsection 2. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection 2.

The deputy may reconsider a benefit payment for any particular week or weeks whenever an error has occurred, but no such redetermination may be made after one year from the date of payment for that week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Subject to subsection 11, unless the claimant files an appeal from that redetermination within 15 calendar days after that redetermination was mailed to the claimant's last known address, the redetermination shall be final, provided that the period within which an appeal may be filed may be extended for a period not to exceed an additional 15 calendar days for good cause shown.

Subject to the same limitations and for the same reasons, the commission may reconsider the determination in any case in which the final decision has been rendered by the Division of Administrative Hearings, the commission or a court, and may apply to the body or court which rendered that final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, that appeal, unless withdrawn, shall be treated as an appeal from the redetermination.

[1987, c. 641, §12 (AMD) .]

11. Prompt payment of claims.

A. Benefits shall be paid promptly in accordance with a determination, reconsidered determination, redetermination, decision of the Division of Administrative Hearings, the commission or a reviewing court under this section upon the issuance of the determination, reconsidered determination, redetermination or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal or petition for judicial review that is provided with respect thereto in this section or the pendency of any such application, filing or petition, unless and until that determination, redetermination or decision has been modified or reversed by a subsequent reconsidered determination, redetermination or decision. In which event, benefits will be paid or denied for weeks of unemployment thereafter in accordance with that reconsidered determination, modified or reversed determination, redetermination or decision. [1987, c. 641, §13 (AMD).]

B. [1981, c. 290, (RP).]

C. If any determination, reconsidered determination, redetermination or decision awarding benefits is finally modified or reversed, any benefits paid to the claimant which would not have been paid under such final decision shall be deemed to be erroneous payments that are not chargeable to the account of any employer. [1971, c. 538, §34 (NEW).]

[1987, c. 641, §13 (AMD) .]

12. Collateral estoppel. Except for proceedings under this chapter, no finding of fact or conclusion of law contained in a decision of a deputy, an administrative hearing officer, the commission, the commissioner or a court, obtained under this chapter, has preclusive effect in any other action or proceeding.

This provision applies to decisions issued on or after July 14, 1990.

[1997, c. 293, §5 (AMD) .]

13. Voluntary withdrawal. A claimant who has filed a claim for benefits under this section may voluntarily withdraw that claim at any time before receiving the benefits. The commissioner shall treat a claimant who has withdrawn a claim under this subsection as not having filed the claim. A claimant may initiate the withdrawal of a claim under this subsection by way of telephone, but the Department of Labor may require a signed withdrawal authorization to verify the withdrawal. Cashing a benefit check relating to the claim is deemed to revoke any withdrawal of that claim.

[2003, c. 96, §1 (NEW) .]

SECTION HISTORY

1971, c. 418, (AMD). 1971, c. 538, §§29-34 (AMD). 1973, c. 147, (AMD). 1975, c. 39, (AMD). 1975, c. 227, (AMD). 1975, c. 710, §§2,4 (AMD). 1975, c. 770, §§124,125 (AMD). 1977, c. 460, §5 (AMD). 1977, c. 587, (AMD). 1977, c. 666, §§1,2 (AMD). 1977, c. 694, §§474-477 (AMD). 1979, c. 78, (AMD). 1979, c. 113, (AMD). 1979, c. 541, §A182 (AMD). 1981, c. 145, (AMD). 1981, c. 177, (AMD). 1981, c. 286, §§2,3 (AMD). 1981, c. 290, (AMD). 1981, c. 547, §1 (AMD). 1983, c. 246, (AMD). 1983, c. 305, §6 (AMD). 1983, c. 351, §§18-21 (AMD). 1983, c. 816, §A23 (AMD). 1985, c. 348, §§7,8 (AMD). 1987, c. 365, §2 (AMD). 1987, c. 641, §§7-13 (AMD). 1989, c. 691, (AMD). RR 1991, c. 2, §99 (COR). 1997, c. 293, §5 (AMD). 1999, c. 376, §1 (AMD). 1999, c. 464, §8 (AMD). 2003, c. 96, §1 (AMD). 2003, c. 163, §1 (AMD).

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