

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Register after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 6. ECONOMIC SECURITY

#### CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY UNEMPLOYMENT INSURANCE

##### PREAMBLE

- 1. Sections Affected:**

R6-3-1503	Amend
Article 54	Amend
R6-3-5475	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(a) and 41-1954(A)(3)  
Implementing statutes: A.R.S. §§ 23-773(B) and 23-772(A)
- 3. The effective date of the rules:**

August 28, 2000
- 4. A list of all previous notices appearing in the Register addressing the final rule.**

Notice of Rulemaking Docket Opening: 5 A.A.R. 2262, July 16, 1999  
Notice of Rulemaking Docket Opening: 5 A.A.R. 4126, October 29, 1999  
Notice of Proposed Rulemaking: 6 A.A.R. 1706, May 12, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Beth Broeker
Address:	Department of Economic Security P.O. Box 6123, Site Code 837A Phoenix, Arizona 85005
Telephone:	(602) 542-6555
Fax:	(602) 542-6000
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Department of Economic Security administers the state Unemployment Insurance (UI) program, authorized under Titles II and IX of the Social Security Act, the Federal Unemployment Tax Act, and Arizona Revised Statutes, Title 23, Chapter 4.

Currently, R6-3-1503 indicates that an appeal to a UI determination of a Deputy must be in writing and signed by the appellant. R6-3-5475 provides that an initial claim for unemployment insurance must be signed by the applicant. The proposed amendments will eliminate the signature requirement for an initial claim filed by telephone or an appeal filed by telephone or fax.

The rulemaking is required to accommodate the Department's move to accepting and processing unemployment insurance claims by telephone and allowing appellants to appeal adverse determinations by telephone or fax.

The rulemaking also addresses grammar and other language changes necessary to provide clear, concise, and understandable rules.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, and any analysis of the study and other supporting material:**

Not applicable

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business and consumer impact:**

There will be a positive but intangible effect on small business and consumers. The proposed changes will make the filing of a claim easier for workers and the submission of an appeal easier for both workers and employers.

In addition, upon full implementation of the planned telephone filing system, the Department will realize an estimated savings of at least \$1.1 million per year in the cost of administering the state unemployment insurance program.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules:**

Minor grammatical and stylistic changes were made at the request of GRRC staff.

**11. A summary of the principal comments and the agency response to them:**

The Department did not receive any public comments.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY  
UNEMPLOYMENT INSURANCE**

**ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS**

Section

R6-3-1503. Proceedings Before an Appeal Tribunal

**ARTICLE 54. MISCELLANEOUS BENEFIT POLICY  
BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT**

Section

R6-3-5475. Claims and Registration

**ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS**

**R6-3-1503. Proceedings Before an Appeal Tribunal**

A. Filing an appeal. Any interested party to a determination of a Deputy may appeal to an Appeal Tribunal within the time limits prescribed listed in A.R.S. § 23-773(B). The appeal shall be in writing, must be signed by the appellant or authorized agent, and may be filed personally, or by mail, by fax, or by telephone, through any public employment office in the United States or Canada, or directly with the Department of Economic Security, Phoenix, Arizona.

1. An appeal filed personally, by mail, or by fax shall be signed by the appellant or authorized agent and filed through any public employment office in the United States or Canada, or directly with the Department of Economic Security.

2. An appeal filed by telephone shall be filed using the toll-free number listed on the determination.

B. Appeal Tribunal hearings

1. Manner of holding hearings. The Appeal Tribunal shall conduct all hearings. All hearings shall be conducted in accordance with A.R.S. § 23-674, in a manner which that will ascertain the substantial rights of the persons involved, and The Appeal Tribunal shall require all testimony shall to be taken under oath or affirmation.

2. Jurisdiction. The Appeal Tribunal's decision and authority is confined solely to issues arising under the Employment Security Law, A.R.S. Title 23, Chapter 4. In every case, the Appeal Tribunal shall render a decision on the issues as stated in the notice of hearing. The Appeal Tribunal may also hear and decide any issues not previously considered by the Deputy ~~which~~ that arise during the hearing, provided all interested parties waive the right to notice on the issues. If any interested party is surprised by a new issue, and unprepared to proceed, the Appeal Tribunal may continue the hearing, or may remand the matter to the Deputy for consideration and action upon ~~such issues~~ the issue.
3. Failure of a party to appear
  - a. If there is no appearance on behalf of an interested party at a scheduled hearing, the Appeal Tribunal may:
    - i. ~~adjourn~~ Adjourn the hearing to a later date; or
    - ii. ~~proceed~~ Proceed to review the evidence of record and ~~such~~ other admissible evidence as may be presented at the scheduled hearing, and make a disposition on the merits of the case.
  - b. If a decision is issued adverse to any interested party that failed to appear at a scheduled hearing, that party may file ~~one~~ 1 written request for a hearing to determine ~~if~~ whether good cause exists to reopen the hearing. The request to reopen shall be filed within 15 calendar days of the mailing date of the decision or disposition, and shall ~~set forth~~ list the reasons for the failure to appear.
  - c. ~~The Appeal Tribunal shall hold a~~ A hearing shall be held to determine whether there was good cause for the failure to appear, and in the discretion of the hearing officer, to review the merits of the case. Upon a finding of good cause for failure to appear at the scheduled hearing, the disposition or decision on the merits shall be vacated and the case ~~reset~~ rescheduled for hearing ~~in accordance with~~ under R6-3-1502, et seq. unless ~~previously held~~ the hearing on the merits is held concurrently with the good cause hearing.
  - d. Good cause warranting reopening of a case shall be established upon proof that both the failure to appear and failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party.
  - e. A party may obtain only 1 hearing to determine ~~if~~ whether good cause exists to reopen a case.
    - i. If a party does not appear at the scheduled good cause hearing, a party may file a written request for review to determine whether good cause exists for failure to appear at both the good cause hearing and the original hearing on the merits.
    - ii. If a case is reopened upon a finding of good cause, and the party fails to appear at the time and date of the new hearing, the party may file a written request for review to determine whether good cause exists for failure to appear at the new hearing.
  - f. A request for review shall state the reasons for the party's failure to appear. The party shall attach copies of any documentation supporting the request.
  - g. The Appeal Tribunal shall review the request and the evidence of record to determine ~~whether~~ if there is good cause to reopen the hearing on the issue of good cause or on the merits, and shall issue a decision accordingly.
  - h. Any interested party may appeal to the Unemployment Insurance Appeals Board from the decision of a hearing officer ~~which~~ that denies reopening for lack of good cause, as defined in subsection (B)(3)(d). The appeal ~~must~~ shall be in writing and filed within 15 calendar days ~~of~~ from the date of mailing of the decision denying reopening. If the Unemployment Insurance Appeals Board reverses the denial to reopen, ~~then~~ the case shall be remanded to the Appeal Tribunal and ~~reset~~ rescheduled for hearing on the merits in accordance with R6-3-1502, et seq.
    - i. ~~When~~ If an appellant fails to appear or waive appearance, the Appeal Tribunal may enter a default disposition in accordance with R6-3-1502(A)(4) without further right to appeal except as provided in this ~~rule~~ Section.
    - j. Notwithstanding the ~~these foregoing~~ provisions, an appellee who fails to appear may appeal to the Unemployment Insurance Appeals Board from an adverse decision on the merits within 15 calendar days of the date of mailing of the decision.
- C. Finality of Appeal Tribunal decision. ~~As set forth in~~ Under A.R.S. § 23-671, ~~unless within 15 calendar days after the decision is mailed or otherwise delivered to the interested parties, petition for review is initiated or the Appeals Board assumes jurisdiction over the matter on its own motion,~~ the ~~decision of the Appeal Tribunal decision~~ becomes final unless an interested party files a written petition for review within 15 calendar days after the decision is mailed to the interested parties, or the Appeals Board assumes jurisdiction over the matter on its own motion. After a decision of the Appeal Tribunal has become final, the matter shall not be reopened, reconsidered, or reheard and the decision shall not be changed except to correct clerical errors.

**ARTICLE 54. MISCELLANEOUS BENEFIT POLICY**  
**BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT**

**R6-3-5475. Claims and Registration**

**A. Definitions.** In this Article:

1. "Department" means the Arizona Department of Economic Security, and any other entity that has an agreement with the Department to provide unemployment insurance and reemployment services;

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2. "Itinerant service" means unemployment insurance claims service on a regularly scheduled, but less than full-time basis to a locality not within a reasonable commuting distance of an established, full-time claims office.
  3. "Personal Identification Number" means a four-digit number selected and entered by the claimant into the unemployment insurance telephone claims filing system.
- B.** Initial claims. A person ~~who wishes to claim~~ claiming unemployment insurance benefits shall: ~~comply with the requirements of this section.~~
1. ~~The claimant shall file~~ File an initial claim with the Department:
    - a. In writing, using an application provided by the Department at an office that accepts unemployment insurance claims. A claimant may also request and submit an application by mail; or
    - b. By telephone, using a toll-free number provided by the Department via local telephone directories and informational flyers.
  2. ~~The initial claim shall include~~ Include the following information on the initial claim:
    - a. Personal identifying information about the claimant, including name, aliases, birth date, address, ~~phone tele-~~ phone number, occupation, social security number, and citizenship status;
    - b. The claimant's employment history, including identifying information on the claimant's last employer, the claimant's last date of work, the reason for the claimant's separation from employment, or a statement as to whether the last work was part-time;
    - c. A statement that the claimant is totally or partially unemployed, and information on the claimant's potential for employment, including:
      - i. A description of the circumstances under which the claimant is willing to accept employment, and
      - ii. The claimant's restrictions to accepting employment;
    - d. A statement of other benefits the claimant has obtained or is seeking, including workers' compensation, social security, retirement benefits, unemployment benefits from another state, and employment benefits such as accrued vacation pay;
    - e. An acknowledgment that the claimant may be subject to penalty for provision of false statements or information; and
    - f. ~~The claimant's signature and date of application or~~ personal identification number.
- C.** Registration; exemptions. A claimant who files a claim satisfies the registration for work requirements of A.R.S. § 23-771(A)(1). The Department shall ~~not~~ not require ~~no~~ further registration efforts by a claimant who:
1. Is unemployed due to a labor dispute at the establishment of the claimant's employer, but intends to return to work for the employer when the dispute ends;
  2. Is temporarily laid off from employment for a known duration of not more than 30 days and has been notified of the date to return to work;
  3. Is residing in a geographic area in which the Department does not provide placement services;
  4. Is registered for work with a labor union through which workers in the claimant's occupation normally obtain work;
  5. Is enrolled in a training course that meets the requirements of A.R.S. § 23-771.01. and A.A.C. R6-3-1809; or
  6. Is laid off from employment because of the seasonal nature of the claimant's occupation, and the Department has determined that no current placement opportunities exist for the claimant. When the season for the claimant's occupation resumes, the claimant shall register with the Department's employment service.
- D.** Effective date of claim. Except as otherwise provided in this ~~rule~~ Section, an initial claim for benefits is effective on the ~~first~~ 1st day of the calendar week in which the claimant files a claim.
1. An initial claim for benefits filed at a biweekly itinerant service point is effective on the 1st day of the prior calendar week if the claimant's unemployment began in that week and the claimant reported to file the claim at the itinerant service point on the next regularly scheduled service date.
  2. An initial claim filed by mail is effective on the 1st day of the calendar week in which the claimant ~~requested~~ requests the claim ~~form~~ forms, if the claimant returns the completed forms within 7 days of the date that the Department mailed or provided the forms to the claimant. In all other cases where the claimant files by mail, the effective date is the 1st day of the calendar week in which the completed forms are mailed to the Department. The mailing date is the date shown on the envelope postmark.
- E.** Earlier effective dates. The Department may give the claim an effective date earlier than the dates described in subsection (D) ~~when~~ if:
1. The claimant shows that the Department gave the claimant incorrect information ~~which~~ that caused the claimant to delay ~~in~~ filing the claim;
  2. The claimant was unable to timely file a claim because the Department did not provide accessible claim services; or
  3. The claimant filed a timely claim against another state; the claim was later cancelled or denied; or the claimant did not qualify for benefits in the other state.
- F.** Cancellation of claims. At the request of a claimant, the Department may cancel a claim that has established a benefit year in any of the following circumstances:

1. ~~When~~ If the claimant:
    - a. Has filed a combined wage claim; or
    - b. Has sufficient wage credits in another state to qualify for a claim; and
    - c. Requests cancellation within 15 days of the most recently issued monetary determination; and
    - d. Repays, or agrees to repay, any benefits received from the Arizona claim-;
  2. ~~When~~ If the claimant is ineligible for benefits because the claimant earned wages in the base period from an employer who contributed to or maintained the claimant's pension plan, and the wages will not be in the base period of a subsequent claim;
  3. ~~When~~ If the claimant:
    - a. Initiates a claim during the final week of a benefit calendar quarter;
    - b. Will be eligible for a higher weekly benefit amount in the following benefit calendar quarter; and
    - c. Requests cancellation within 7 days of the start of the new benefit calendar quarter;
  4. Except as provided in subsections (F) (1) through (F)(3), ~~when if~~ the claimant initiates a claim but does not file for a week of unemployment, and the claimant will qualify for a higher weekly benefit amount in a subsequent benefit calendar quarter;
  5. ~~The If~~ the claimant shows that the Department provided the claimant with incorrect information regarding the claimant's potential eligibility at the time the claim was initiated.
- G.** Continued claim for benefits. Except as otherwise provided in A.R.S. §§ 23-761 through 23-766, ~~and A.A.C. R6-3-1405 and R6-3-1809, for each week of unemployment claimed, and in a format prescribed by the Department,~~ a claimant shall timely file a continued claim for benefits; or waiting period credit- on a form provided by the Department or by telephone.
1. A continued claim shall include the following information for the applicable claim period:
    - a. A statement of any employment the claimant held, and any wages the claimant earned;
    - b. A statement as to the claimant's ability to work, availability for work, and efforts to seek work;
    - c. A statement as to whether the claimant received or refused any offers of work;
    - d. A statement that the claimant understands and acknowledges that the claimant has a duty to notify the Department of changes in any circumstances that may affect the claimant's eligibility for benefits; and
    - e. The claimant's signature or personal identification number.
  2. ~~The A~~ claim is timely filed when the Department receives the claim within 14 days of the benefit week ending date. If the claim is mailed, the claim is timely if postmarked within 14 days of the benefit week ending date.
- H.** Untimely claims. The Department shall disallow an untimely claim unless
1. The untimeliness was due to Department error; or
  2. The claimant establishes good cause for the untimeliness. As used in this Section, "good cause" ~~shall mean~~ means that the untimeliness was due to a circumstance beyond the reasonable control of the claimant.
  3. Notwithstanding any other provision of this Section, when the untimely claim is the 1st occurrence in a benefit year, the Department shall not disallow the claim unless the Department finds that the untimeliness was willful. Willfulness is established ~~when if~~ when if:
    - a. The claimant files the claim more than 7 days after the 14-day period specified in subsection (G)(2), and
    - b. The Department has clear and convincing proof that the claimant knew of the filing requirements and deliberately chose to ignore them.
- I.** Adjudication and eligibility interviews.
1. The Department may require a claimant to:
    - a. Participate ~~participate~~ in a determination fact-finding proceeding, if an issue arises regarding eligibility; or
    - b. Participate in a periodic eligibility review, if a claimant has claimed benefits for at least 2 weeks.
  2. The Department shall give the claimant not less than 5 calendar days prior written notice ~~when if~~ if it schedules a proceeding or review.
  3. Except as otherwise provided in this ~~paragraph~~ subsection, a claimant who fails to report in person or be available via telephone, as scheduled, for a proceeding or interview is ineligible for benefits for the week in which the appointment was scheduled, until the claimant reports to the Department.
    - a. The Department shall not hold the claimant ineligible if:
      - i. The claimant reports within 3 work days of the scheduled interview; or the end of the same calendar week, whichever 1st occurs; or
      - ii. The claimant had good cause for the failure to report.
    - b. As used in this ~~paragraph~~ subsection, good cause includes the following circumstances:
      - i. The claimant was ill,
      - ii. The claimant lacked transportation to the appointment,
      - iii. The claimant had a job interview or work ~~which that~~ which that precluded the claimant from keeping the appointment, or
      - iv. Other similar circumstances beyond the reasonable control of the claimant.

**J.** Reemployment services.

1. The Department may require a claimant to participate in a reemployment service program if the Department determines that the claimant:
  - a. Is likely to exhaust regular unemployment compensation benefits, and
  - b. Needs job search assistance services to make a successful transition to new employment.
2. If a claimant who is required to participate in reemployment services fails to report to a reemployment service provider, or to fulfill the requirements of the claimant's reemployment service plan, the claimant is ineligible for benefits for the week during which the act of non-participation occurred, unless the claimant establishes good cause for non-participation. Good cause ~~shall include~~ includes the circumstances listed in ~~subparagraph~~ subsection (I)(3)(b).