



LEXSTAT 42 NJR 2170(A)

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RULE PROPOSALS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

42 N.J.R. 2170(a)

Joint Proposed Readoption with Amendments: N.J.A.C. 1:12 and 1:12A

[Click here to view Interested Persons Statement](#)

Special Hearing Rules

Department of Labor and Workforce Development Hearings

Unemployment Benefit and State Plan Temporary Disability Insurance and Family Leave Insurance Cases; Private Plan Temporary Disability Insurance and Family Leave Insurance Cases

Authorized By: Laura Sanders, Acting Director, Office of Administrative Law and Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1A-3(e); 43:21-6(d) through (f); 43:21-10; 43:21-17; 43:21-25 et seq.; and 52:14F-5(e), (f) and (g).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-228.

Submit comments by November 19, 2010 to:

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and

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, the special rules for Department of Labor and Workforce Development cases involving temporary disability insurance, family leave insurance, and unemployment benefits, N.J.A.C. 1:12 and 1:12A, were to expire on April 4, 2010. Pursuant to Executive Order No. 1 (2010), the chapter expiration dates are extended from April 4, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. These rules establish procedures governing temporary disability insurance cases, family leave insurance cases, and unemployment benefits cases. Aspects of the hearing which are not specifically covered by these special rules are controlled by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

These rules were jointly promulgated by the Office of Administrative Law (OAL) and the Department of Labor and Workforce Development (DOLWD) and have proven an efficient and effective hearing process for the conduct of cases before the DOLWD. The Office of Administrative Law and the Department of Labor and Workforce Development have reviewed these rules and have determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated.

The proposed readoption of N.J.A.C. 1:12 includes several amendments:

N.J.A.C. 1:12-1.1 is amended to provide that these rules are also applicable to State plan family leave insurance cases.

N.J.A.C. 1:12-2.1 is amended to include State plan temporary disability insurance and State plan family leave insurance cases under the matters heard by the appeal tribunals, and State plan family leave insurance cases under the cases heard by the Board of Review.

N.J.A.C. 1:12-5.1(b) is amended to provide that attorney's fees in State plan family leave insurance cases must be approved by the Board of Review. Subsection (d) is amended to clarify that a person may be disqualified from appearing before the Board of Review for failure to observe the rules of the Division of Unemployment Insurance or the Division of Temporary Disability Insurance, in addition to the Unemployment Compensation Law of New Jersey or the rules of the Board of Review.

N.J.A.C. 1:12-10.1 concerning discovery of Division files is amended to include within its requirements State plan family leave insurance cases.

N.J.A.C. 1:12-18.1 concerning decisions of the appeal tribunals is amended to include State plan family leave insurance cases.

N.J.A.C. 1:12-18.2 concerning decisions of the Board of Review is amended to include State plan family leave insurance cases.

In all other respects, the Office of Administrative Law and the Department of Labor and Workforce Development propose to readopt the rules contained in N.J.A.C. 1:12 without amendment. The summary of the subchapters appears below.

Subchapter 1 establishes the applicability of the rules, which govern unemployment benefit cases and State plan temporary disability hearings heard by the Board of Review or appeal tribunals of the Department of Labor and Workforce Development.

Subchapter 2 sets forth definitions of "appeal tribunal," "appellate body," "Board of Review" and "Division."

Subchapter 5 provides for representation pro se, by an attorney or by a non-attorney.

Subchapter 9 requires written notice of the hearing, by mail, to the parties at least five days before the hearing. It also sets forth the procedure for requesting adjournments.

Subchapter 10 sets forth the process for requesting production or review of the Division's records. Such request must be in writing, clearly state the nature of the requested information and the reason it is needed; they may be granted to the extent necessary to permit proper presentation of the case. Disclosure of specifically identifiable information concerning workers, employers or other persons is generally prohibited. Copying and other costs for obtaining information may be assessed and specific charges for transcripts and sound recordings are set forth.

Subchapter 11 sets forth the procedure for issuance of subpoenas and payment of witness fees.

Subchapter 14 specifies the hearing procedure. Hearings shall be open to the public and conducted in a fair and impartial manner. Hearings before the Board of Review may be on the record made before the appeal tribunal or may include the taking of additional evidence. The rules also set forth the consequence of a failure to appear and the process for scheduling and conducting a telephone hearing. The rules provide for the disqualification of members of appeal tribunals. Additionally, the Board of Review, on its own motion, may remove an appeal tribunal decision to itself and may transfer a case from one appeal tribunal to another for hearing and decision.

Subchapter 15 sets forth the rules of evidence. It provides for the admissibility of hearsay evidence provided that the decision must be supported by sufficient, substantial and legally competent evidence. It sets forth the procedure for entering into stipulations.

Subchapter 18 sets forth the form and content for the decision of the appeal tribunal and Board of Review. It also sets forth a mechanism for reopening Board of Review decisions and for the revision of a statement of facts in order to correct clerical and typographical errors.

The Office of Administrative Law and Department of Labor and Workforce Development propose to readopt the rules contained in N.J.A.C. 1:12A with amendments that clarify that the rules apply to private plan family leave insurance cases.

N.J.A.C. 1:12A-1.1, Applicability, is amended to include private plan family leave insurance cases within the scope of the rules.

The proposed amendments to N.J.A.C. 1:12A-2.1 correctly identify the Division as the Division of Unemployment Insurance or the Division of Temporary Disability Insurance, as applicable. The amendments also specify that a hearing officer hears and decides cases concerning private plan family leave insurance.

In all other respects, the Office of Administrative Law and the Department of Labor and Workforce Development propose to readopt the [page=2171] rules contained in N.J.A.C. 1:12A without amendment. A summary of the subchapters therein appears below.

Subchapter 1 establishes the applicability of the rules, which govern private plan temporary disability cases heard by hearing officers of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-50(2).

Subchapter 2 sets forth definition of "Act," "Division" and "hearing officer."

Subchapter 5 provides for representation pro se, by an attorney or by a non-attorney.

Subchapter 9 requires written notice of hearing, served personally, by certified or registered mail, or by telegram, to the parties or authorized representatives at least five days before the hearing. It sets forth the procedure for requesting adjournments. It also provides that, after filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle issues and, pending a disposition, a formal hearing shall not be scheduled.

Subchapter 10 sets forth the process for requesting production or review of records of the Division. Such requests must be in writing, clearly state the nature of the requested information and the reason it is needed. Requests may be granted to the extent necessary to the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligations under the Act.

Subchapter 11 sets forth the procedure for issuance of subpoenas and payment of witness fees.

Subchapter 14 specifies the hearing procedure. It provides that hearings shall be conducted in a fair and impartial manner. The rules also set forth the consequences of a failure to appear and the procedure for withdrawal of a pending complaint. The hearing officer may consolidate proceedings with similar facts and circumstances when it would not be prejudicial to any party. The rules also provide that the facts and issues may be stipulated by the parties.

Subchapter 15 sets forth the form and content of a hearing officer's decision, service thereof, and the order's effect, as well as the process for appeal of an order.

As the Office of Administrative Law and the Department of Labor and Workforce Development have provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments provide parties with procedures and standards to follow in unemployment compensation, State plan family leave insurance, and State plan temporary disability insurance appeals before the Board of Review and the appeal tribunals, and in private plan temporary disability insurance and private plan family leave insurance appeals before a hearing officer. The appeal procedures provide parties with an equitable, uniform and needed opportunity to pursue their cases as required by Federal and State unemployment and temporary disability laws.

Economic Impact

The rules proposed for readoption with amendments continue to ensure the provision of a fair and efficient hearing process for unemployment compensation, family leave insurance, and temporary disability cases. The rules also govern fees paid to witnesses appearing in answer to subpoenas, with N.J.A.C. 1:12-11.2 including a mileage rate of \$.25 per mile. This provides uniformity with other program areas including private plan temporary disability insurance cases. The costs to parties are for providing various notices and copies, and for representation, if any. No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law or the Temporary Disability Benefits Law by the Board of Review. The rules will act to eliminate confusion concerning hearing practice and procedure, and will result in greater efficiency in the hearings process.

Federal Standards Statement

The rules proposed for readoption with amendments do not exceed standards imposed by Federal law at 26 U.S.C. §§ 3301 et seq. (Federal Unemployment Tax Act).

Jobs Impact

The rules proposed for readoption with amendments will not cause the generation or the loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A small business party to a hearing would be subject to the deadlines for adjournment requests and requests for reconsideration of the Board's or appeal tribunal's decision. Parties are subject to time requirements for hearing requests and objections thereto, and must provide copies of documentary or physical evidence to be introduced. The requesting party is responsible for notice to other parties. Beyond costs for copying, obtaining information, transcripts and sound recordings, no costs will result from the requirements imposed, and legal representation is not required. As these requirements are considered the minimum necessary to provide for a fair and efficient hearing process, no exception or differentiation in requirements based on business size is provided.

Smart Growth Impact

The rules proposed for readoption with amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will have no impact on housing affordability in this State. The rules set forth procedures for contested case hearings.

Smart Growth Development Impact

The rules proposed for readoption with amendments will have no impact on the number of housing units or the availability of affordable housing in the State, and will have no affect on smart growth development in Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan. The rules set forth procedures for contested case hearings.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:12 and 1:12A.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 12

UNEMPLOYMENT BENEFIT, [AND] STATE PLAN TEMPORARY DISABILITY **AND STATE PLAN FAMILY LEAVE INSURANCE CASES**

SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases, [and] State plan temporary disability **hearings, and State plan family leave insurance** hearings, under N.J.S.A. 43:21-1-50(b), heard by the Board of Review or the appeal tribunals of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability **and private plan family leave insurance** cases heard by hearing officers of the Department of Labor **and Workforce Development** pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Appeal tribunal" means the entity which conducts hearings and renders decisions concerning employer and employee appeals of [page=2172] decisions for unemployment, **State plan temporary disability and State plan family leave insurance** benefits made at the local office level. In so doing, the appeal tribunal acts as agency head.

...

"Board of Review" means the entity which conducts appeals of unemployment benefit determinations and State plan temporary disability **and State plan family leave insurance** claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

1:12-5.1 Representation

(a) (No change.)

(b) In any unemployment benefits proceeding and in any State plan temporary disability **and State plan family leave insurance** claim proceeding of an appeal before an appeal tribunal or the Board of Review, all fees for attorneys repre-

sending claimants shall be approved by the Board of Review after it receives submission of an authorization form and a copy of the applicable decision.

(c) (No change.)

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of **either** the [division] **Division of Unemployment Insurance or the Division of Temporary Disability Insurance**, or the rules of the Board of Review.

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefit appeals and State plan temporary disability **or State plan family leave insurance** claim appeals, requests for the production or inspection of the records of either the Division of Unemployment Insurance or the Division of Temporary Disability Insurance shall be addressed to the Board of Review.

(b)-(i) (No change.)

1:12-18.1 Decisions of appeal tribunals

(a) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability **or State plan family leave insurance** claims and the reasons therefore shall be mailed to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

(b)-(c) (No change.)

1:12-18.2 Decisions of Board of Review

(a)-(b) (No change.)

(c) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability **or State plan family leave insurance** claims shall be mailed by the Board of Review to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

CHAPTER 12A

PRIVATE PLAN TEMPORARY DISABILITY **AND PRIVATE PLAN FAMILY LEAVE** INSURANCE CASES

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability **and private plan family leave** insurance cases heard by hearing officers of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-50(a) (see also N.J.A.C. 12:18). State plan temporary disability **and State plan family leave insurance** cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21-50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Division" means the Division of Unemployment **Insurance** [and] **or the Division of** Temporary Disability Insurance in the Department of Labor and Workforce Development.

"Hearing officer" means the individual assigned to hear and decide appeals concerning private plan temporary disability **and private plan family leave insurance** benefits. In so doing, the hearing officer acts as agency head.