

CHAPTER 3310
DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
UNEMPLOYMENT APPEALS

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3310.2901 SCOPE AND PURPOSE.

Parts 3310.2901 to 3310.2924 establish procedures for hearings conducted by unemployment law judges on the appeal of department determinations pertaining to eligibility or ineligibility for unemployment benefits, charges to employers' accounts and tax rate assignments, determinations on an employer's liability to pay taxes, determinations on fraudulent payment of unemployment benefits, and all other appeals that are decided by unemployment law judges either by law or rule.

Statutory Authority: *MS s 14.386; 14.388; 268.0122; 268.021; 268.10*

History: *12 SR 2252; L 1997 c 66 s 79,80; 22 SR 950; L 1999 c 107 s 66; L 2000 c 343 s 4; 31 SR 285; 33 SR 999*

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3310.2902 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 3310.2901 to 3310.2924, the terms defined in this part have the meanings given them.

Subp. 2. **Appeals office.** "Appeals office" means the appeals office of the Department of Employment and Economic Development.

Subp. 3. [Repealed, 33 SR 999]

Subp. 4. **Department.** "Department" means the Department of Employment and Economic Development.

Subp. 5. **Party.** "Party" means any unemployment benefits applicant or employer whose legal rights, duties, or privileges will be directly determined in a hearing.

Statutory Authority: *MS s 14.386; 14.388; 268.0122; 268.021; 268.10*

History: *12 SR 2252; L 1994 c 483 s 1; L 1997 c 66 s 80; 22 SR 950; L 1999 c 107 s 66; L 2000 c 343 s 4; L 2005 c 112 art 2 s 41; 31 SR 285; 33 SR 999*

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3310.2905 NOTICE OF APPEAL.

Subpart 1. [Repealed, L 2004 c 206 s 53]

Subp. 2. **Information.** The notice of appeal must also include the following information:

A. A statement that a hearing will be scheduled promptly, and that the parties should begin to prepare for the hearing.

B. A statement of the parties' right to represent themselves or to be represented by an attorney or other duly authorized representative.

C. A brief description of the procedure to be followed at the hearing.

D. A statement that the parties should bring to the hearing all documents, records, and witnesses they need to support their position.

E. A statement that a party may request the witnesses and documents that another party intends to bring to the hearing, and an explanation of the process for making the request.

F. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, and an explanation of the process for requesting a subpoena.

G. A statement that documents contained in the department's records that will be introduced at the hearing as exhibits are available upon request, and an explanation of the process for making the request.

H. If a decision issued under Minnesota Statutes, section 268.105, subdivision 1, paragraph (c), could result in an applicant being overpaid unemployment benefits, the notice must contain the following statement:

"You have already received unemployment benefits on your benefit account. It is important for you to attend this hearing even if you are back to work and not receiving unemployment benefits now, because if you lose the appeal, you will not be able to receive further unemployment benefits and you will have to pay back all the unemployment benefits you have already received. These unemployment benefits are called overpaid unemployment benefits and they could be deducted from your state income tax refund, rent credit refund, or from a future benefit account."

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; L 2004 c 206 s 53; 31 SR 285; 33 SR 999*

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3310.2908 RESCHEDULING.

Requests to reschedule a hearing must be addressed to the appeals office in advance of the regularly scheduled hearing date. The request may be made in person, by telephone or other electronic transmission, or in writing. Unless a determination is made by the appeals office that a request to reschedule a hearing is made for the purposes of delay, a hearing must be rescheduled by the appeals office based on a party's need for additional time to obtain necessary evidence or to obtain representation or adequately prepare, inability to be present at the regularly scheduled time due to illness, other judicial or quasi-judicial proceedings that have previously been scheduled, or other compelling reasons beyond the control of the party that prevent attendance at the originally scheduled time. A hearing may be rescheduled only once except in the case of an emergency. If requested by the appeals office, a written statement by mail or electronic transmission confirming the reasons for requesting that the case be rescheduled must be provided to the appeals office by the requesting party.

Unless a determination is made by the unemployment law judge that a request to reschedule a hearing is made for the purpose of delay, a judge who has been assigned a case for hearing must reschedule a hearing at the request of a party provided grounds for rescheduling have been established. The failure of subpoenaed witnesses to appear at the hearing or the failure to produce subpoenaed documents may constitute grounds for rescheduling.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285; 33 SR 999*

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3310.2909 [Repealed, L 2004 c 206 c 53]

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3310.2910 NOTICE OF HEARING; CONSOLIDATION OF ISSUES.

The notice of hearing must be mailed to each party at the last known address at least ten days before the scheduled date of hearing unless notice is waived by the parties. The notice must state the time, date, and place of the hearing, the name of the unemployment law judge who will hear the case, the issues to be considered at the hearing, and must contain the information required by part 3310.2905, subpart 2, items B to H. If the issue to be considered at the hearing involves ineligibility for unemployment benefits because of a separation from employment, the notice must explain that the parties should be prepared to discuss all incidents that arose during the course of the employment that led to the separation. The parties must also be advised of their right to represent themselves or to be represented by an attorney or other duly authorized representative. Upon the motion of a party to a hearing or on the unemployment law judge's motion, the unemployment law judge may consolidate for hearing issues involving the same parties and may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified on the record at the hearing and does not object on the record.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; L 1997 c 66 s 80; L 1999 c 107 s 66; L 2000 c 343 s 4; 31 SR 285; 33 SR 999*

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3310.2911 INTERPRETERS.

The department must provide an interpreter, when necessary, upon the request of a party. The requesting party must notify the appeals office at least seven calendar days before the date of the hearing that an interpreter is required. If no request is made, the unemployment law judge must continue any hearing where a witness or principal party in interest is a disabled person so that an interpreter can be appointed. All notices and other documents distributed to parties and witnesses by the appeals office must be prepared in easily understood English.

A written statement in English, Spanish, Laotian, Vietnamese, Cambodian, and Hmong which states that the accompanying documents are important, and that if the reader does not understand the documents, the reader should seek immediate assistance, must accompany all notices and written documents distributed by the appeals office to the party whenever the office has reason to believe the primary language of the party is one of those previously listed other than English.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285; L 2005 c 56 s 2*

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3310.2912 EXHIBITS IN TELEPHONE CONFERENCE HEARINGS.

Upon receipt of notice of a telephone conference hearing, and no later than five calendar days before the scheduled time of hearing, parties may submit to the department any documents they wish to offer as exhibits at the hearing. Copies of the documents as well as all documents that are contained in the department's records that will be introduced as exhibits must be mailed to all parties by the appeals office in advance of the hearing. If a party moves to introduce additional documents during the course of the hearing, and the unemployment law judge rules that the documents should be admitted into evidence, the moving party must send copies of the documents to the unemployment law judge and the opposing party. The record must be left open for sufficient time for the submission of a written objection and for response to the documents. The response may be in writing sent by mail or electronic transmission or the unemployment law judge may, when appropriate, reconvene the telephone conference hearing to obtain a response or permit cross-examination regarding the late filed exhibits.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285; 33 SR 999*

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3310.2913 ACCESS TO DATA.

The parties to a hearing must be allowed reasonable access to department data necessary to represent themselves properly in proceedings under parts 3310.2901 to 3310.2924. Access to data under parts 3310.2901 to 3310.2924 must be consistent with Minnesota Statutes, chapter 13; Minnesota Statutes, section 268.19; and other laws relating to data practices. Upon oral or written request by a party or the party's representative, the appeals office must provide copies of documents that are in the department's records that will be introduced as exhibits. The copies must be provided at no cost and, upon request, must be mailed or sent by electronic transmission to the party or the party's representative.

Statutory Authority: *MS s 14.386; 14.388; 268.0122; 268.021; 268.10*

History: *12 SR 2252; L 1997 c 66 s 79; 22 SR 950; 31 SR 285; 33 SR 999*

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3310.2914 SUBPOENAS AND DISCOVERY.

Subpart 1. **Subpoenas.** Subpoenas are available to a party to compel the attendance of witnesses, the production of documents or other exhibits upon a showing of necessity by the party applying for subpoenas. Subpoenas may be obtained by calling or writing the appeals office sufficiently in advance of the scheduled hearing to allow for the service of the subpoenas. The requesting party must identify the person or documents to be subpoenaed, the subject matter of the evidence requested, and their necessity. A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious. A request for a subpoena may be renewed when a party finds an additional basis or need for evidence.

A party whose request for a subpoena has been denied may request at the time of the hearing that the unemployment law judge who conducts the hearing issue the subpoena. If the unemployment law judge grants the request for a subpoena, the unemployment law judge may adjourn the hearing to allow a sufficient time for service of and compliance with the subpoena.

Subp. 2. **Discovery.** Each party, within three working days following demand by another party, must disclose the name of the party's attorney or other representative and the names of all witnesses the party intends to call at the hearing and identify any written documents that the party intends to introduce at the hearing. The demand and the response may be made by mail or by telephone. The demanding party must be permitted to inspect any identified documents at a mutually agreeable time and location prior to the hearing if a demand to inspect is made at least three working days before the hearing. Unless otherwise agreed, the demanding party must be permitted to reproduce copies of any identified documents only when reproduction is possible without removing them from a party's possession. Any witnesses unknown at the time of the disclosure must be disclosed as soon as they become known. If a party fails to comply with the disclosure requirements of this subpart, the unemployment law judge must, upon request by the demanding party, consider rescheduling the hearing under part 3310.2908.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285*

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3310.2915 DISQUALIFICATION OF UNEMPLOYMENT LAW JUDGE.

An unemployment law judge must remove himself or herself from any case where the judge believes that presiding over the case would create the appearance of impropriety. No judge may hear any case where any of the parties to the appeal are related to the judge by blood or marriage. A judge must not hear any case if the judge has a financial or personal interest in the outcome. A judge having knowledge of such a relationship or interest must immediately remove himself or herself from the case.

Any party may move for the removal of a judge by written application of the party together with a statement of the basis for removal. Upon the motion of the party, the chief unemployment law judge must decide the fitness of the judge to hear the particular case.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285; 33 SR 999*

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3310.2916 REPRESENTATION BEFORE UNEMPLOYMENT LAW JUDGE.

Any individual may personally appear in any proceeding before an unemployment law judge and may be represented by an attorney or a duly authorized representative. Any partnership may be represented by any of its members, an attorney, or other duly authorized representative. Any corporation or association may be represented by an officer, an attorney, or other duly authorized representative.

An unemployment law judge may refuse to allow any person to represent others in any proceeding before an unemployment law judge if that person is unethical in conduct or intentionally and repeatedly fails to observe the provisions of the law or rules relative to the proceedings or the instructions of the unemployment law judge.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285; 33 SR 999*

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3310.2917 PUBLIC ACCESS TO HEARINGS.

Appeal hearings are public hearings. An unemployment law judge may exclude nonessential persons only when necessary due to physical space limitations or to maintain decorum. Upon the judge's motion or upon the motion of a party, a judge may sequester witnesses due to space limitations or to avoid prejudice or collusion.

The judge must make a recording of all testimony that is the official record. No other voice recordings or pictures may be made in the hearing room of any party, attorney, representative, or witness involved in the hearing while the hearing is in session.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285*

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3310.2918 [Repealed, L 2004 c 206 c 53]

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3310.2919 DATA PRACTICES NOTICE.

At the beginning of each hearing, an unemployment law judge must advise the parties in the following or a similar manner of the data practices implications of the hearing:

"The purpose of this hearing is to take testimony and evidence. This information will be used to decide your rights under Minnesota law. Certain other government officials may have access to information provided at this hearing if this is allowed by statute or the information may be disclosed pursuant to a valid court order."

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285*

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3310.2920 ADMINISTRATION OF OATH OR AFFIRMATION.

Before testifying, every witness is required to declare to testify truthfully, by oath or affirmation. The mode of administering an oath is as practiced in this state. The form of the oath or affirmation is as set forth in Minnesota Statutes, sections 358.07 and 358.08.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285*

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3310.2921 CONDUCT OF HEARING.

The order of presentation of evidence is determined by the unemployment law judge. The judge must inform the parties of the statutory provisions on burdens of proof before the taking of testimony.

Each party may present and examine witnesses and offer their own documents or other exhibits. To the extent permitted by Minnesota Statutes, section 268.19, and other laws pertaining to the protection of data, a party must be provided with a copy of any document or exhibit accepted into evidence upon the request of the party. Opposing parties have the right to examine witnesses, object to exhibits and testimony, and cross-examine the other party's witnesses. The judge should assist unrepresented parties in the presentation of evidence. The judge must rule upon evidentiary objections on the record. The judge must permit rebuttal testimony. Parties have the right to make closing statements. Closing statements may include comments based upon the evidence and arguments of law. The judge may limit repetitious testimony and arguments.

The judge must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing. The judge must ensure that relevant facts are clearly and fully developed.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; L 1997 c 66 s 79; 31 SR 285; 33 SR 999*

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3310.2922 RECEIPT OF EVIDENCE.

Only evidence received into the record of any hearing may be considered by the unemployment law judge. The parties may stipulate to the existence of any fact or the authenticity of any exhibit.

All competent, relevant, and material evidence, including records and documents in the possession of the parties that are offered into evidence, are part of the hearing record. A judge may receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. A judge may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious. A judge is not bound by statutory and common law rules of evidence. The rules of evidence may be used as a guide in a determination of the quality and priority of evidence offered. A judge may draw adverse inferences from the refusal of a party or witness to testify on the basis of any privilege. A judge may only use reliable, probative, and substantial evidence as a basis for decision.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285; 33 SR 999*

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3310.2923 OFFICIAL NOTICE.

An unemployment law judge may take official notice of adjudicative facts and matters of common knowledge and may take notice of facts within the judge's specialized knowledge in the field of unemployment insurance. Any fact officially noticed must be noticed on the record in the decision. Parties must be notified of any facts officially noticed by the judge and must be given an opportunity to contest the noticed facts.

A judge may officially note any facts that are subject to judicial notice in the courts of Minnesota.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; L 1997 c 66 s 80; L 1999 c 107 s 66; L 2000 c 343 s 4; 31 SR 285; 33 SR 999*

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3310.2924 EX PARTE COMMUNICATIONS.

Private communication between an unemployment law judge assigned to an appeal and one or more of the parties to an appeal, in the absence of the other parties to the appeal, is forbidden if it relates to the substance of the matter at issue. Private communication is to be avoided even when it does not relate to the subject matter of the appeal if it would create the appearance of impropriety.

Statutory Authority: *MS s 14.386; 14.388; 268.021; 268.10*

History: *12 SR 2252; 31 SR 285*

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