

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 following:

A. appeals of all department determinations including determinations on benefit accounts, eligibility or ineligibility for unemployment benefits, employers' tax rate, an employer's liability to pay taxes, and fraudulent payment of unemployment benefits; or

B. referrals for direct hearing under Minnesota Statutes, section 268.101, subdivision 3a.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.0122; 268.021; 268.10; 268.105*

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; 39 SR 151*

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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. [Repealed, 39 SR 151]

Subp. 3. [Repealed, 33 SR 999]

Subp. 3a. **Applicant.** "Applicant" means an individual who has filed an application for unemployment benefits and has established or is pursuing the establishment of a benefit account.

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

Subp. 4a. **Electronic transmission.** "Electronic transmission" means a communication that is sent online, by telephone, or by facsimile.

Subp. 4b. **Hearing.** "Hearing" means the evidentiary hearing authorized under Minnesota Statutes, section 268.105, subdivision 1.

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

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.0122; 268.021; 268.10; 268.105*

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; 39 SR 151*

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3310.2905 NOTICE OF HEARING.

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 [Repealed, L 2004 c 206 s 53]

Subp. 2. **Notice.** The chief unemployment law judge must send a notice of hearing, by mail or electronic transmission, to each party at least ten calendar days before the scheduled date of hearing unless notice is waived by the parties. The notice must state the time, date, method by which the hearing will be conducted, and issues to be considered at the hearing. 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 notice of hearing must also include materials that provide the following information:

A. a statement that the purpose of the hearing is to take sworn testimony and other evidence on the issues involved, that the hearing is the only procedure available under the law at which a party may present evidence, and that further appeals consist of a review of the evidence submitted at the hearing;

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

C. a brief description of the procedure to be followed at the hearing, including the role of the unemployment law judge;

D. a statement that the parties should arrange in advance for the participation of witnesses they need to support their position;

E. a statement that a party may find out the name of the other party's attorney or other representative and names of the witnesses that the other party intends to have testify at the hearing, and an explanation of the process for making the request;

F. a statement that subpoenas may be available to compel the participation 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, and documents submitted by the parties that will be introduced at the hearing as possible exhibits will be sent to the parties in advance of the hearing;

H. a statement that even if the applicant already received unemployment benefits, it is important to participate in the hearing, because if the applicant is held ineligible, the applicant will not be able to receive further benefits and the applicant will have to pay back the benefits already received;

I. a statement that the unemployment law judge will determine the facts based upon a preponderance of the evidence along with the statutory definition of "preponderance of the evidence";

J. a statement that a party who fails to participate in the hearing will not be allowed a rehearing unless the party can show good cause for failing to participate, along with the statutory definition of "good cause"; and

K. a statement that an applicant, if unemployed, must file weekly continued requests for unemployment benefits while the appeal is pending.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; L 2004 c 206 s 53; 31 SR 285; 33 SR 999; 39 SR 151*

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3310.2908 RESCHEDULING AND CONTINUANCES.

Subpart 1. **Rescheduling.** Requests to reschedule a hearing must be addressed to the chief unemployment law judge in advance of the regularly scheduled hearing date. The request may be made in person, by telephone or other electronic transmission, or by mail. A hearing must be rescheduled based on a party's need for additional time to obtain necessary evidence or to obtain representation or adequately prepare, inability to participate due to illness, or other compelling reasons beyond the control of the party that prevent participation at the originally scheduled time. A hearing may be rescheduled only once by each party except in the case of an emergency. If requested, a written statement by mail or electronic transmission confirming the reasons for requesting that the case be rescheduled must be provided to the chief unemployment law judge.

The ten-calendar-day notice requirement for hearings does not apply to rescheduled hearings.

Subp. 2. **Continuances.** If a request for rescheduling is made because of the unavailability of a witness or the need to obtain documents, the unemployment law judge may direct that the hearing take place as scheduled. After obtaining the testimony and other evidence then available, the unemployment law judge must determine whether the hearing should be continued to obtain the testimony of the unavailable witness or the unavailable documents. The ten-calendar-day notice requirement for hearings does not apply to continued hearings.

The unemployment law judge has the discretion to continue a hearing if the judge determines that additional evidence is necessary for a proper result.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 33 SR 999; 39 SR 151*

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3310.2910 CONSOLIDATION OF ISSUES AND NEW ISSUES.

Upon the request of a party or on the unemployment law judge's motion, the judge may consolidate for hearing issues involving the same parties. The unemployment law judge may take testimony and render a decision on issues not listed on the notice of hearing if each party is notified on the record, is advised of the right to object, and does not object. If a party objects, the unemployment law judge must:

- A. continue the hearing to allow the party to prepare for consideration of the issue; or
- B. direct the department to address the issue and send to the parties a determination by mail or electronic transmission.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

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; 39 SR 151*

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3310.2911 INTERPRETERS.

The chief unemployment law judge must provide an interpreter, when necessary, upon the request of a party. The requesting party must notify the chief unemployment law judge at least five calendar days before the date of the hearing that an interpreter is required. The unemployment law judge must continue any hearing where a witness or party needs an interpreter in order to be understood or to understand the proceedings.

All notices and other written materials sent to parties must be prepared in easily understood English.

A written statement in English, Spanish, Vietnamese, Somali, 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 materials sent to the parties.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; L 2005 c 56 s 2; 39 SR 151*

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3310.2912 EXHIBITS IN HEARINGS.

Upon receipt of the notice of hearing, and no later than five calendar days before the scheduled date of hearing, parties may submit to the chief unemployment law judge, by electronic transmission or mail, any documents a party would like to offer as exhibits at the hearing. Copies of the documents submitted by the parties, as well as all documents that are contained in the department's records that will be introduced as exhibits, must be mailed, or sent by electronic transmission, to all parties or the parties' representatives by the chief unemployment law judge in advance of the hearing.

If a party requests to introduce additional documents during the course of the hearing, and the unemployment law judge rules that the documents should be considered, the requesting party must provide copies of the documents to the unemployment law judge and the other party. The record must be left open for sufficient time for the submission of a written response to the documents. The response may be sent by mail or electronic transmission. The unemployment law judge may, when appropriate, reconvene the hearing to obtain a response or permit cross-examination regarding the late filed exhibits.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 33 SR 999; 39 SR 151*

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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 in the hearing. Access to data must be consistent with all laws relating to data practices. The data must be provided by the chief unemployment law judge at no cost and mailed or sent by electronic transmission to the party or the party's representative.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.0122; 268.021; 268.10; 268.105*

History: *12 SR 2252; L 1997 c 66 s 79; 22 SR 950; 31 SR 285; 33 SR 999; 39 SR 151*

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3310.2914 SUBPOENAS AND DISCOVERY.

Subpart 1. **Subpoenas.** The unemployment law judge may issue subpoenas to compel the attendance of witnesses, the production of documents or other exhibits, upon a showing of necessity by the requesting party. Requests for issuance of subpoenas must be made to the chief unemployment law judge, by electronic transmission or mail, 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.

If a request for a subpoena has been denied, the unemployment law judge must reconsider the request during the hearing and determine whether the request was properly denied. If the unemployment law judge determines that the request for a subpoena was not properly denied, the judge must continue the hearing to allow for service of and compliance with the subpoena.

The unemployment law judge may issue a subpoena even if a party has not requested one.

Subp. 2. **Discovery.** Each party, within five calendar days following request 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 have testify at the hearing. The request and the response may be made by mail or by electronic transmission. Any witnesses unknown at the time of the request must be disclosed as soon as they become known. If a party fails to comply with the disclosure requirements, the unemployment law judge may, upon notice to the parties, continue the hearing.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 39 SR 151*

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3310.2915 DISQUALIFICATION OF UNEMPLOYMENT LAW JUDGE.

An unemployment law judge must request to be removed from any case by the chief unemployment law judge where the judge believes that presiding over the case would create the appearance of impropriety. The chief unemployment law judge must remove an unemployment law judge from any case where the unemployment law judge has a relationship that would disqualify the judge under Rule 2.11 (A)(2) of the Judicial Code of Conduct, including the definitions provided in the terminology section. The chief unemployment law judge must remove an unemployment law judge from any case if the judge has a financial or personal interest in the outcome.

Any party may request the removal of an unemployment law judge by submitting to the chief unemployment law judge, by mail or electronic transmission, a written statement of the basis for removal. The chief unemployment law judge must decide the fitness of the unemployment law judge to hear the particular case.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 33 SR 999; 39 SR 151*

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3310.2916 REPRESENTATION BEFORE UNEMPLOYMENT LAW JUDGE.

In a hearing before an unemployment law judge, a party may be self-represented or represented by an attorney or an authorized representative. Except for an attorney-at-law, no person may charge an applicant a fee of any kind.

An unemployment law judge may refuse to allow a person to represent others in a hearing if that person acts in an unethical manner or repeatedly fails to follow the instructions of the judge.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 33 SR 999; 39 SR 151*

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3310.2917 PUBLIC ACCESS TO HEARINGS AND RECORDING OF HEARINGS.

Subpart 1. **Public access not permitted.** Hearings are not public. Only parties, their representatives and witnesses, and authorized department personnel are permitted to participate in or listen to hearings. If any other person wishes to listen to or sit in on a hearing, the parties must provide their consent as required by Minnesota Statutes, section 13.05, subdivision 4.

Subp. 2. **Recording.** The unemployment law judge must make a recording of all testimony that is the official record. No other voice recordings or pictures may be made of any party, representative, or witness during the hearing.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 39 SR 151*

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3310.2919 [Repealed, 39 SR 151]

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3310.2920 ADMINISTRATION OF OATH OR AFFIRMATION.

An unemployment law judge has authority to administer oaths and affirmations. Before testifying, every witness is required to declare to testify truthfully, by oath or affirmation. Minnesota Statutes, sections 358.07 and 358.08, provide the form of the oath or affirmation.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 39 SR 151*

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3310.2921 CONDUCT OF HEARING.

The chief unemployment law judge has discretion regarding the method by which the hearing is conducted. The hearing must be conducted by an unemployment law judge as an evidence-gathering inquiry, without regard to a burden of proof. The order of presentation of evidence is determined by the unemployment law judge.

Each party may present and examine witnesses and offer their own documents or other exhibits. Parties have the right to examine witnesses, object to exhibits and testimony, and cross-examine the other party's witnesses. The unemployment law judge must assist all parties in the presentation of evidence. The unemployment law judge must rule upon evidentiary objections on the record. The unemployment law 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 unemployment law judge may limit repetitious testimony and arguments.

The unemployment law judge must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing, including the sequestration of witnesses to avoid prejudice or collusion. The unemployment law judge must ensure that all relevant facts are clearly and fully developed. The unemployment law judge may obtain testimony and other evidence from department employees and any other person the judge believes will assist the judge in reaching a proper result.

Before taking testimony, the unemployment law judge must inform the parties of the following:

- A. that the purpose of the hearing is to take testimony and other evidence on the issues;
- B. that the hearing is the only opportunity available to the parties to present testimony and other evidence on the issues involved;
- C. an explanation of how the hearing will be conducted, including the role and obligations of the unemployment law judge;
- D. that the parties have the right to request that the hearing be continued so that additional witnesses and documents can be presented, by subpoena if necessary;
- E. that the facts will be determined upon a preponderance of the evidence, along with the statutory definition of "preponderance of the evidence";
- F. the statutory provision on burden of proof;
- G. that certain government agencies may have access to the information provided at the hearing if allowed by statute and that the information provided may be disclosed under a district court order; and
- H. that after the hearing is over, the unemployment law judge will issue a written decision, which will be sent to the parties by mail or electronic transmission.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; L 1997 c 66 s 79; 31 SR 285; 33 SR 999; 39 SR 151*

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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. An unemployment law 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. An unemployment law judge may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious. An unemployment law judge is not bound by statutory and common law rules of evidence. The rules of evidence may be used as a guide in determining the quality of evidence offered. An unemployment law judge may draw adverse inferences from the refusal of a party or witness to testify on the basis of any privilege. An unemployment law judge may only use reliable, probative, and substantial evidence as a basis for decision.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 33 SR 999; 39 SR 151*

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3310.2923 OFFICIAL NOTICE.

An unemployment law judge may take official notice of matters of common knowledge and may take notice of facts within the judge's specialized knowledge in the field of unemployment insurance. The unemployment law judge must state on the record any fact that is judicially noticed. The unemployment law judge must give the parties an opportunity to contest the noticed facts.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

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; 39 SR 151*

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3310.2924 EX PARTE COMMUNICATIONS.

Private communication between an unemployment law judge assigned to conduct the hearing and one of the parties, in the absence of the other party, 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 hearing if it would create the appearance of impropriety.

Statutory Authority: *MS s 14.386; 14.388; 116J.035; 268.021; 268.10; 268.105*

History: *12 SR 2252; 31 SR 285; 39 SR 151*

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