

1.1 **Department of Employment and Economic Development**

1.2 **Adopted Permanent Rules Relating to Unemployment Insurance; Modifying**
1.3 **Appeals, Employer Records, and Worker Status Provisions**

1.4 **3310.2901 SCOPE AND PURPOSE.**

1.5 Parts 3310.2901 to 3310.2924 establish procedures for hearings conducted by
1.6 unemployment law judges following:

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

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

1.12 **3310.2902 DEFINITIONS.**

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

1.15 Subp. 2. [See repealer.]

1.16 Subp. 3. [Repealed, 33 SR 999]

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

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

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

1.24 Subp. ~~4a~~ 4b. **Hearing.** "Hearing" means the ~~de novo due process~~ evidentiary hearing
1.25 authorized under Minnesota Statutes, section 268.105, subdivision 1.

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

2.3 **3310.2905 NOTICE OF HEARING.**

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 [Repealed, L 2004 c 206 s 53]

2.5 Subp. 2. **Notice.** The chief unemployment law judge must send a notice of hearing,
2.6 by mail or electronic transmission, to each party at least ten calendar days before the
2.7 scheduled date of hearing unless notice is waived by the parties. The notice must state the
2.8 time, date, method by which the hearing will be conducted, and issues to be considered
2.9 at the hearing. If the issue to be considered at the hearing involves ineligibility for
2.10 unemployment benefits because of a separation from employment, the notice must explain
2.11 that the parties should be prepared to discuss all incidents that arose during the course
2.12 of the employment that led to the separation. The notice of hearing must also include
2.13 materials that provide the following information:

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

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

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

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

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

3.4 F. a statement that subpoenas may be available to compel the participation of
3.5 witnesses or the production of documents, and an explanation of the process for requesting
3.6 a subpoena;

3.7 G. a statement that documents contained in the department's records, and
3.8 documents submitted by the parties that will be introduced at the hearing as possible
3.9 exhibits will be sent to the parties in advance of the hearing;

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

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

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

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

3.22 **3310.2908 RESCHEDULING AND CONTINUANCES.**

3.23 Subpart 1. **Rescheduling.** Requests to reschedule a hearing must be addressed to
3.24 the chief unemployment law judge in advance of the regularly scheduled hearing date.
3.25 The request may be made in person, by telephone or other electronic transmission, or

4.1 by mail. A hearing must be rescheduled based on a party's need for additional time to
4.2 obtain necessary evidence or to obtain representation or adequately prepare, inability to
4.3 participate due to illness, or other compelling reasons beyond the control of the party that
4.4 prevent participation at the originally scheduled time. A hearing may be rescheduled only
4.5 once by each party except in the case of an emergency. If requested, a written statement
4.6 by mail or electronic transmission confirming the reasons for requesting that the case be
4.7 rescheduled must be provided to the chief unemployment law judge.

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

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

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

4.19 **3310.2910 CONSOLIDATION OF ISSUES AND NEW ISSUES.**

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

4.25 A. continue the hearing to allow the party to prepare for consideration of the
4.26 issue; or

5.1 B. direct the department to address the issue and send to the parties a
5.2 determination by mail or electronic transmission.

5.3 **3310.2911 INTERPRETERS.**

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

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

5.11 A written statement in English, Spanish, Vietnamese, Somali, and Hmong which
5.12 states that the accompanying documents are important, and that if the reader does not
5.13 understand the documents, the reader should seek immediate assistance, must accompany
5.14 all notices and written materials sent to the parties.

5.15 **3310.2912 EXHIBITS IN HEARINGS.**

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

5.23 If a party requests to introduce additional documents during the course of the
5.24 hearing, and the unemployment law judge rules that the documents should be ~~admitted~~
5.25 ~~into evidence~~ considered, the requesting party must ~~send, by electronic transmission or~~
5.26 ~~mail,~~ provide copies of the documents to the unemployment law judge and the other
5.27 party. The record must be left open for sufficient time for the submission of a written

6.1 response to the documents. The response may be sent by mail or electronic transmission.
6.2 The unemployment law judge may, when appropriate, reconvene the hearing to obtain a
6.3 response or permit cross-examination regarding the late filed exhibits.

6.4 **3310.2913 ACCESS TO DATA.**

6.5 The parties to a hearing must be allowed reasonable access to department data
6.6 necessary to represent themselves in the hearing. Access to data must be consistent with
6.7 all laws relating to data practices. The data must be provided by the chief unemployment
6.8 law judge at no cost and mailed or sent by electronic transmission to the party or the
6.9 party's representative.

6.10 **3310.2914 SUBPOENAS AND DISCOVERY.**

6.11 Subpart 1. **Subpoenas.** The unemployment law judge may issue subpoenas to
6.12 compel the attendance of witnesses, the production of documents or other exhibits, upon
6.13 a showing of necessity by the requesting party. Requests for issuance of subpoenas
6.14 must be made to the chief unemployment law judge, by electronic transmission or mail,
6.15 sufficiently in advance of the scheduled hearing to allow for the service of the subpoenas.
6.16 The requesting party must identify the person or documents to be subpoenaed, the subject
6.17 matter of the evidence requested, and their necessity. A request for a subpoena may be
6.18 denied if the testimony or documents sought would be irrelevant, immaterial, or unduly
6.19 cumulative or repetitious.

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

6.25 The unemployment law judge may issue a subpoena ~~on the judge's own motion~~ even
6.26 if a party has not requested one.

7.1 Subp. 2. **Discovery.** Each party, within ~~three~~ five calendar days following request by
7.2 another party, must disclose the name of the party's attorney or other representative and the
7.3 names of all witnesses the party intends to have testify at the hearing. The request and the
7.4 response may be made by mail or by electronic transmission. Any witnesses unknown at
7.5 the time of the request must be disclosed as soon as they become known. If a party fails to
7.6 comply with the disclosure requirements, the unemployment law judge may, upon notice
7.7 ~~by the requesting party~~ to the parties, continue the hearing.

7.8 **3310.2915 DISQUALIFICATION OF UNEMPLOYMENT LAW JUDGE.**

7.9 An unemployment law judge must request to be removed from any case by the chief
7.10 unemployment law judge where the judge believes that presiding over the case would
7.11 create the appearance of impropriety. The chief unemployment law judge must remove an
7.12 unemployment law judge from any case where ~~any of the parties to the appeal are related~~
7.13 ~~to the judge or have a personal relationship with the judge~~ the unemployment law judge
7.14 has a relationship that would disqualify the judge under Rule 2.11(A)(2) of the Judicial
7.15 Code of Conduct, including the definitions provided in the terminology section. The chief
7.16 unemployment law judge must remove an unemployment law judge from any case if the
7.17 judge has a financial or personal interest in the outcome.

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

7.22 **3310.2916 REPRESENTATION BEFORE UNEMPLOYMENT LAW JUDGE.**

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

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

8.4 **3310.2917 PUBLIC ACCESS TO HEARINGS AND RECORDING OF HEARINGS.**

8.5 Subpart 1. **Public access not permitted.** Hearings are not public. ~~If a member of the~~
8.6 ~~public requests to listen in on a hearing conducted by telephone conference, or requests~~
8.7 ~~to sit in on a hearing conducted in person, the unemployment law judge must make the~~
8.8 ~~appropriate accommodation. An unemployment law judge may exclude a member of the~~
8.9 ~~public only when necessary to maintain decorum. Only parties, their representatives and~~
8.10 ~~witnesses, and authorized department personnel are permitted to participate in or listen to~~
8.11 ~~hearings. If any other person wishes to listen to or sit in on a hearing, the parties must~~
8.12 ~~provide their consent as required by Minnesota Statutes, section 13.05, subdivision 4.~~

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

8.16 **3310.2920 ADMINISTRATION OF OATH OR AFFIRMATION.**

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

8.21 **3310.2921 CONDUCT OF HEARING.**

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

9.1 Each party may present and examine witnesses and offer their own documents
9.2 or other exhibits. Parties have the right to examine witnesses, object to exhibits and
9.3 testimony, and cross-examine the other party's witnesses. The unemployment law judge
9.4 must assist all parties in the presentation of evidence. The unemployment law judge
9.5 must rule upon evidentiary objections on the record. The unemployment law judge must
9.6 permit rebuttal testimony. Parties have the right to make closing statements. Closing
9.7 statements may include comments based upon the evidence and arguments of law. The
9.8 unemployment law judge may limit repetitious testimony and arguments.

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

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

9.17 A. that the purpose of the hearing is to take testimony and other evidence on
9.18 the issues;

9.19 B. that the hearing is the only opportunity available to the parties to present
9.20 testimony and other evidence on the issues involved;

9.21 C. an explanation of how the hearing will be conducted, including the role and
9.22 obligations of the unemployment law judge;

9.23 D. that the parties have the right to request that the hearing be continued so that
9.24 additional witnesses and documents can be presented, by subpoena if necessary;

9.25 E. that the facts will be determined upon a preponderance of the evidence, along
9.26 with the statutory definition of "preponderance of the evidence";

10.1 F. the statutory provision on burden of proof;

10.2 G. that certain government agencies may have access to the information
10.3 provided at the hearing if allowed by statute and that the information provided may be
10.4 disclosed under a district court order; and

10.5 H. that after the hearing is over, the unemployment law judge will issue a
10.6 written decision, which will be sent to the parties by mail or electronic transmission.

10.7 **3310.2922 RECEIPT OF EVIDENCE.**

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

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

10.22 **3310.2923 OFFICIAL NOTICE.**

10.23 An unemployment law judge may take official notice of matters of common
10.24 knowledge and may take notice of facts within the judge's specialized knowledge in the
10.25 field of unemployment insurance. ~~Any fact officially noticed~~ The unemployment law
10.26 judge must be so stated state on the record ~~during the hearing.~~ ~~Parties must be given any~~

11.1 fact that is judicially noticed. The unemployment law judge must give the parties an
11.2 opportunity to contest the noticed facts.

11.3 **3310.2924 EX PARTE COMMUNICATIONS.**

11.4 Private communication between an unemployment law judge assigned to conduct
11.5 the hearing and one of the parties, in the absence of the other party, is forbidden if it
11.6 relates to the substance of the matter at issue. Private communication is to be avoided
11.7 even when it does not relate to the subject matter of the hearing if it would create the
11.8 appearance of impropriety.

11.9 **3315.0555 DETERMINING WORKER STATUS.**

11.10 Subpart 1. **Essential Factors.** When determining whether an individual is an
11.11 employee or an independent contractor, five ~~essential~~ factors must be considered and
11.12 weighed within a particular set of circumstances. The five ~~essential~~ factors to be
11.13 considered are:

11.14 A. the right or the lack of the right to control the means and manner of
11.15 performance;

11.16 B. the right to discharge the worker without incurring liability;

11.17 C. the mode of payment;

11.18 D. furnishing of materials and tools; and

11.19 E. control over the premises where the services are performed.

11.20 The two most important ~~essential~~ factors are items A and B.

11.21 Other factors, not specifically identified in this part, may be considered if a
11.22 ~~determination~~ the outcome is inconclusive when applying the ~~essential~~ factors in items A
11.23 to E. The degree of their importance may vary depending upon the occupation or work
11.24 situation being considered and why the factor is present in the particular situation.

11.25 Subp. 2. [Repealed, L 2012 c 201 art 3 s 16]

12.1 Subp. 3. [Repealed, L 2012 c 201 art 3 s 16]

12.2 Subp. 4. [Repealed, L 2012 c 201 art 3 s 16]

12.3 Subp. 5. [Repealed, L 2004 c 206 s 53]

12.4 **3315.1001 SCOPE.**

12.5 Parts 3315.1001 and 3315.1010 clarify an employer's duty with regard to records as
12.6 required under Minnesota Statutes, section 268.186.

12.7 **3315.1010 RECORDS.**

12.8 Subpart 1. **Record keeping.** Each employer must establish, maintain, and preserve
12.9 records with respect to individuals performing services for it. The records must be
12.10 preserved for a period of not less than four years in addition to the current calendar year.
12.11 The records must show for each individual the following:

12.12 A. name;

12.13 B. Social Security number;

12.14 C. days and the number of hours each day in which the individual performed
12.15 services;

12.16 D. location where services were performed;

12.17 E. wages paid and wages due but not paid for services;

12.18 F. rate of pay;

12.19 G. amounts paid as allowances or reimbursement for travel or other activity
12.20 which were not included as wages. The records must show each item of expense incurred
12.21 during each pay period or calendar month; and

12.22 H. the complete resident address.

12.23 Subp. 2. **Instate and outstate.** For services performed both in Minnesota and
12.24 outside Minnesota the records required by subpart 1 must include:

13.1 A. the state in which the employer maintains a base of operations used by
13.2 the individual;

13.3 B. the state from which the services are directed and controlled; and

13.4 C. a list of the states in which the individual performs services, other than
13.5 temporary or incidental services, and the dates services were performed in each state.

13.6 Subp. 3. **Covered and noncovered employment.** For services performed in both
13.7 covered employment and noncovered employment within a pay period the records
13.8 required by subpart 1 must include the hours spent performing services in covered
13.9 employment and the hours spent performing noncovered employment.

13.10 **REPEALER.** Minnesota Rules, parts 3310.2902, subpart 2; 3310.2919; 3315.0200,
13.11 subpart 1; 3315.0203; 3315.0211; 3315.0212, subparts 2 and 3; 3315.0213; 3315.0801;
13.12 3315.0805; 3315.0810; 3315.0815; 3315.0820; 3315.0825; 3315.0830; 3315.0835;
13.13 3315.0840; 3315.0845; 3315.0901; and 3315.0905, are repealed.