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## Appeals and Hearing Procedures

### Secs. 31-244-1—31-244-17.

Repealed, June 23, 1986.

#### Sec. 31-244-1a. Definitions

As used in sections 31-244-1a through 31-244-9a inclusive:

(a) “Administrator” means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(b) “Benefits” means unemployment compensation payable to an individual with respect to his unemployment under Chapter 567 of the General Statutes.

(c) “Claimant” means an individual who is filing or has filed a claim for benefits.

(d) “Predetermination hearing” means a hearing called by the Administrator, pursuant to Section 31-241 of the General Statutes, for the purpose of finding facts necessary to make a determination of eligibility for benefits.

(e) “Rebuttal” means an opposing or explanatory statement by an individual in response to potentially adverse information or a contradictory statement.

(Effective July 1, 1992; amended October 23, 1996)

#### Sec. 31-244-2a. Predetermination hearings

The Administrator shall schedule a predetermination hearing in any instance in which (a) an individual’s claim for benefits indicates that his reason for unemployment presents an issue of eligibility under any provision of Subsection (d) of Section 31-227 or 31-236 of the General Statutes, or Section 31-235 of the General Statutes if the Administrator determines that the issue of the individual’s availability for work relates to the circumstances of his separation, or (b) the Administrator cannot reasonably determine from the individual’s claim or by contacting the separating employer by telephone at the time the claim is made that his reason for unemployment was lack of work or some other form of non-disqualifying involuntary termination.

(Effective July 1, 1992; amended October 23, 1996)

#### Sec. 31-244-3a. Notice of predetermination hearing

(a) Except as provided in subsections (e) and (f), a claimant may elect to participate in a predetermination hearing by appearing in person or by telephone. The Administrator shall allow the claimant to participate solely by submitting a written statement when the claimant has a compelling personal reason that prevents his appearance in person or by telephone including but not limited to his return to employment.

(b) The Administrator shall promptly provide written notice of the predetermination hearing to the individual and shall mail written notice to the employer of the date, time and place of the predetermination hearing, as well as a brief statement of the reason for unemployment provided by the claimant to be adjudicated at such hearing. The notice shall specify a time range during which the claimant should be available when telephone participation is elected.

(c) The hearing notice to the employer shall specify that the employer may elect to participate in a predetermination hearing by appearing in person, by telephone or by submitting a written response to the hearing notice, containing the employer’s account of the circumstances surrounding the individual’s separation. The Administrator may provide specific questions to be answered in writing by the employer. The notice shall specify a time range during which the employer’s designated representative should be available when telephone participation is elected.

(d) Where technologically feasible, the administrator may authorize either party to participate in a predetermination hearing by other electronic means.

(e) The administrator may deny a party's request to participate by telephone in a predetermination hearing where the administrator concludes that in light of highly complex questions of fact or law or other unusual circumstances, telephone participation would significantly undermine the effectiveness of the adjudication process.

(f) The administrator shall not generally allow telephone participation in a hearing which is being conducted solely to adjudicate eligibility issues arising in conjunction with a continuing claim for benefits (e.g. availability for work, reasonable efforts to find work) and may disallow telephone participation whenever such issue is being adjudicated concurrently with a predetermination hearing.

(g) The hearing notice shall inform the claimant and the employer of their rights in the predetermination hearing including:

(1) the right to be represented by any person, including an attorney;

(2) the right to present evidence, documents and witnesses; and

(3) the right to cross-examine witnesses and parties, so long as the Administrator deems such cross-examination to be appropriate and relevant.

(h) The Administrator shall schedule each predetermination hearing no earlier than the tenth calendar day following the issuance of notice of such hearing.

(i) The Administrator shall mail the notice of the predetermination hearing to the employer's address that appears on the Notice of Separation (Form UC-61). Where no Notice of Separation is provided to the Administrator, the Administrator shall mail the predetermination hearing notice to the most recent address of record provided by the employer to the Administrator's Employer Status Unit.

(Effective July 1, 1992; amended October 23, 1996)

#### **Sec. 31-244-4a. Timeliness of written response to notice of predetermination hearing**

In order to be considered timely for purposes of Section 31-241 of the Connecticut General Statutes, an employer's written response to notice of a predetermination hearing must be actually received by mail, in person or by facsimile machine (FAX) in the office of the Administrator where such hearing is scheduled to be heard by the time the hearing is scheduled to commence on the scheduled hearing date. In cases where the employer elects to participate in the predetermination hearing process by telephone, such election must be communicated to the administrator no later than the close of business, two days prior to the date of said hearing along with the name, title and telephone number of the individual who will participate in the predetermination hearing on behalf of the employer. Nothing in this section precludes consideration of a late response received before an eligibility determination is made, or subsequent to such determination in the Administrator's exercise of continuous jurisdiction under Section 31-243 of the Connecticut General Statutes. However, such consideration shall not relieve the employer of any charges imposed pursuant to Section 31-241 of the Connecticut General Statutes as a consequence of untimely response.

(Effective July 1, 1992; amended October 23, 1996, January 3, 2005)

#### **Sec. 31-244-5a. Postponements**

In order to insure timely determinations of eligibility for benefits, it shall be the general practice of the Administrator to deny postponement requests. The Administrator may grant a request for postponement in extraordinary circumstances where the rights of one or both parties would be substantially prejudiced by denying such

a request and the effect of such denial could not be mitigated by the opportunity for submission of a written statement or participation by telephone or other electronic means. The granting of any postponement request shall be at the sole discretion of the Administrator.

(Effective July 1, 1992; amended October 23, 1996)

**Sec. 31-244-6a. Exemption of certain categories from statutory charging consequences for non-participation in the predetermination hearing**

An employer's account shall not be charged as a direct consequence of the employer's failure to participate in person or in writing in a predetermination hearing in any instance in which an individual's separation from such employer was not adjudicated (a) due to the Administrator's failure to identify the issue at the time the individual initiated his claim, or (b) because the individual wilfully failed to disclose employment and a subsequent separation from such employment, including any incident of fraud identified by the Administrator.

(Effective July 1, 1992)

**Sec. 31-244-7a. Determination of adequacy of the employer's written response**

An employer's written response to notice of a predetermination hearing must contain adequate information to be considered a timely response within the meaning of Section 31-241. To be considered adequate, an employer's written response must (a) specify the reason for the separation, and (b) answer, in good faith, the questions corresponding to the appropriate separation issue, either by completing the appropriate areas of the questionnaire provided to the employer with the predetermination hearing notice or by submitting relevant alternate documentation, or both. The Administrator shall determine whether an employer's written response is adequate. So long as an employer substantially complies with (a) and (b) above, the Administrator shall determine that an employer's written response is adequate, regardless of the quality and content of such response.

(Effective July 1, 1992)

**Sec. 31-244-8a. Conduct of the predetermination hearing**

(a) The Administrator will control and conduct the predetermination hearing informally through examination of the record and direct questioning as he determines necessary for a proper and complete decision.

(b) In conducting the hearing, the Administrator will not be bound by the ordinary common law or statutory rules of evidence or procedure.

(c) The issue(s) addressed at the predetermination hearing will be confined to the issue(s) listed on the hearing notice. A hearing will not be conducted regarding any other eligibility issue which is identified by the Administrator during the predetermination hearing unless the parties are afforded proper notice of such issue and hearing.

(d) An issue stated in terms of a voluntary leaving or a discharge shall generally be construed to be a single issue covering the separation from employment so that the record may be developed on either or both kinds of separation.

(e) The Administrator may limit or deny a party's right to cross-examination whenever he determines that such cross-examination is not producing or would not produce information useful or relevant to adjudication of the claim.

(f) The Administrator may limit or exclude from the record testimony, documents or other evidence which he determines to be incompetent, irrelevant, unduly repetitious or otherwise improper.

(g) The Administrator shall not permit any individual present at the predetermination hearing to engage in improper behavior or tactics which disrupt the fair, orderly, efficient and effective conduct of the hearing. The Administrator may, in his own discretion, take any action he deems necessary to prevent or discontinue such behavior or tactics, including termination of the hearing.

(h) During a predetermination hearing, on the Administrator's own motion or on the motion of any interested party, and at the sole discretion of the Administrator, a continuance may be granted for good cause and the record kept open for a specified period of time.

(i) The administrator shall contact by telephone any party who has provided timely notice of an intent to participate by telephone on the date of the scheduled hearing during the time range on the hearing notice.

(j) The administrator may develop and utilize any forms or questionnaires deemed necessary for use in the hearing process.

(k) The Administrator shall take all steps necessary to insure that any party, whether participating in person, in writing, by telephone or by other electronic means to a predetermination hearing, is afforded appropriate opportunity for rebuttal. However, where an employer's participation is limited to a written statement and the employer has not indicated an interest in participating by telephone, the Administrator will attempt to contact the employer by telephone where there is a clear conflict between the factual accounts offered by each party and adjudication of the fact(s) in dispute is necessary to disposition of the claim. Where information resulting from such contact is provided by the employer when the claimant is no longer physically or telephonically present, the claimant shall be informed of the information provided by the employer. The claimant shall be provided an appropriate opportunity for rebuttal of any potentially disqualifying information acquired as a result of such contact, regardless of when such information was provided.

(l) The Administrator shall use best efforts to accurately summarize and record in writing the relevant statements of both parties and any witnesses in a predetermination hearing and shall further use best efforts to verify that the statement accurately reflects the parties' testimony.

(m) Where either party makes a request, the Administrator shall provide within a reasonable time period, a copy of any adjudicative report created by the administrator during a predetermination hearing.

(Effective July 1, 1992; amended October 23, 1996)

### **Sec. 31-244-9a. Employer's appeal of charges resulting from its nonparticipation in the predetermination hearing**

The issue of an employer's non-participation in a predetermination hearing may not be the subject of an appeal to an Employment Security Appeals Referee until the effect of such non-participation is reflected in either a statement of quarterly charges (Form UC-54Q) in the case of a contributing employer, or in the case of a reimbursing employer, a monthly billing statement. The employer may appeal its assessment of charges resulting from its non-participation in the predetermination hearing upon receipt of the first statement of quarterly or monthly charges which includes charges resulting from the employer's non-participation at the predetermination hearing. Such statement of quarterly or monthly charges shall be the only determination of the Administrator through which the issue of nonparticipation may be appealed. A contributing employer's appeal from this determination must be made pursuant to the provisions of Section 31-225a(h)(3) of the Connecticut General

Statutes. A reimbursing employer's appeal from this determination shall be made pursuant to the provisions of Section 31-225(g)(2)(D) of the Connecticut General Statutes.

(Effective July 1, 1992; amended January 3, 2005)