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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW**

49 N.J.R. 320(a)

Proposed Readoption with Amendments: *N.J.A.C. 12:20*

Proposed Repeal: *N.J.A.C. 12:20 Appendix*

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

Board of Review Rules

Authorized By: Aaron R. Fichtner, Ph.D., Acting Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1A-3(e); 43:21-6(d)*, (e), and (f); 43:21-10; and 43:21-17.

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

Proposal Number: PRN 2017-028.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

March 14, 2017
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
10th Floor, Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by April 22, 2017, to:

David Fish, Executive Director
Office of Legal and Regulatory Services

New Jersey Department of Labor and Workforce Development
 PO Box 110-13th Floor
 Trenton, New Jersey 08625-0110
 E-mail: David.fish@dol.nj.gov.

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1*, *N.J.A.C. 12:20*, the chapter which sets forth rules pertaining to the operation of the Board of Review (Board) and appeal tribunals, was scheduled to expire on January 14, 2017. As the agency submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to July 13, 2017, pursuant to *N.J.S.A. 52:14B-5.1.c(2)*. The Board conducts reviews of employer and employee appeals, as well as appeals from the Division of Unemployment Insurance, of unemployment benefit determinations made by the appeal tribunals in accordance with *N.J.S.A. 43:21-6(e)*. The appeal tribunals conduct hearings and render determinations concerning employer and employee appeals pertaining to decisions regarding the award or denial of unemployment benefits made by the Division pursuant to *N.J.S.A. 43:21-6(d)* through (f). Consistent with the provisions of *N.J.S.A. 34:1A-3(e)*, *43:21-6(d)* through (f), *43:21-10*, and *43:21-17*, the subject rules set forth the organization of the Board of Review and appeal tribunals, the procedures attendant to the presentation of appeals to the individual appeal tribunals and to the Board of Review, and general rules that govern both appeal stages. The Department of Labor and Workforce Development (Department) has reviewed *N.J.A.C. 12:20* and, with the exception of the amendments described in detail below, has determined the chapter to be necessary, reasonable, and proper for the purposes for which it was originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:20* be readopted with amendments.

A summary of the chapter follows:

Subchapter 1 describes the organization of the Board of Review.

Subchapter 2 describes the organization of the appeal tribunals.

Subchapter 3 sets forth procedures for the presentation of appeals to the appeal tribunals.

Subchapter 4 sets forth procedures for the presentation of appeals to the Board of Review.

Subchapter 5 contains general rules for both appeals to the appeal tribunals and Board of Review; specifically, the subchapter addresses the inspection of appeal tribunals and Board of Review decisions.

The chapter Appendix contains *N.J.A.C. 1:12-1.1*, the Office of Administrative Law's rules for the handling of unemployment benefit cases and State plan temporary disability hearings under *N.J.S.A. 43:21-50(b)* heard by the Board of Review or the appeal tribunals of the Department.

Following is a description of the amendments proposed by the Department:

The Department is proposing throughout the chapter to eliminate obsolete references to the "Department of Personnel," and replace of those references with references to the "Civil Service Commission."

At *N.J.A.C. 12:20-3.1(c)*, the Department is proposing to add a comma after the phrase, "(I)n computing any period of time."

At *N.J.A.C. 12:20-3.1(h)*, the Department is proposing to delete the words, "notification of," within the final sentence of the subsection. Thus, the final sentence would read, "[d]elivery of an initial determination means actual receipt of the determination by the claimant or any interested party to the appeal."

The Department is proposing the repeal of the Appendix to *N.J.A.C. 12:20*, as it is unnecessary.

The Department is proposing throughout the chapter to delete all statements to the effect that *N.J.A.C. 1:12* is "appended to the end of this chapter," since those rules will no longer be appended to the chapter.

At *N.J.A.C. 12:20-4.1*, the Department is proposing to add a comma within subsection (b) following the phrase, "(I)n computing any period of time;" to make a stylistic change within subsection (d), moving the phrase, "a notice of appeal to the Board of Review," from its current location to earlier in the sentence; and to remove from subsection (g), [page=321] the words, "of notification or mailing," and to replace them with, "from mailing."

At the second sentence of *N.J.A.C. 12:20-5.1*, the Department is proposing to replace the phrase "without in any manner," with the phrase, "not in any manner."

As the Department has provided a 60-day comment period for 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 and a repeal benefit employers and claimants in that they provide an appeal framework within which those parties are afforded the due process rights required by both Federal and State unemployment laws.

Economic Impact

The rules proposed for readoption with amendments and a repeal benefit employers and claimants within the State of New Jersey in that they delineate the duties and responsibilities of the appeal tribunals and the Board of Review, as well as the procedures for submitting appeals to those appellate bodies. Compliance with this chapter, as amended, should be accomplished within existing financial resources on the part of either employers or claimants. As required by law, the rules proposed for readoption with amendments and a repeal do not assess fees, charges, or other expenses to a claimant who is requesting material to actively pursue an appeal.

Federal Standards Statement

The rules proposed for readoption with amendments and a repeal do not exceed standards imposed by Federal law at 26 *U.S.C. §§ 3301* et seq. (Federal Unemployment Tax Act). Consequently, no Federal standards analysis is required.

Jobs Impact

The rules proposed for readoption with amendments and a repeal will have no particular effect upon the number of jobs that are expected to be generated or the number of jobs expected to be lost within the State of New Jersey. Rather, this chapter sets forth the organization of the Board of Review, the organization of the appeal tribunals, the procedures for presenting appeals to the appeal tribunals and the Board of Review, and general rules for both appeal stages, thereby protecting the due process rights of claimants and employers, as required by Federal and State unemployment law.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a repeal will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

N.J.A.C. 12:20-3.1 and *4.1* impose compliance requirements upon employers appealing decisions concerning unemployment benefits determinations and seeking relief from benefits charges. Some of these employers may be small businesses within the meaning of the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The compliance requirements imposed require an aggrieved person or entity to file a written statement, including a facsimile, electronic mail, or other electronic transmission within a certain number of days, depending on the type of review requested. The Board shall deem the statement to be a notice of appeal or a request for review, provided the statement indicates dissatisfaction with a determination of the Division and states the reasons for that dissatisfaction.

The rules proposed for readoption with amendments and a repeal do not require small businesses to retain the services of professionals in order to comply with this chapter. However, some small businesses may choose to retain attorneys to represent them before the Board. Attorney's fees will vary depending on factors such as a particular matter's complexity, and a particular attorney's geographic location, skill, and level of experience.

The Board has endeavored to minimize the regulatory burden of this chapter on the regulated public, including small businesses, in several ways. First, the rules, as they presently exist and as proposed for readoption with amendments and a repeal, require no prescribed or technical forms or language in order to generate the review process. This makes the Board's review more available to laypersons who may not have access to professional legal assistance in preparing their applications for appeal. This rudimentary pleading requirement permits the Board to liberally construe employers' expressions of their dissatisfaction as grounds for the Board's review. Moreover, the Board has discretion to extend filing deadlines upon a showing of good cause.

The Board has determined that the requirements of the chapter, as proposed for readoption with amendments and a repeal, are the minimum necessary in order to generate and to process employers' applications for Board review. Therefore, other than the mechanisms designed to minimize the regulatory burden on all members of the public discussed above, the Board has provided no differing or lesser standards for small businesses.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a repeal would not evoke a change in the average costs associated with housing or the affordability of housing. The basis for this finding is that the rules proposed for re-adoption with amendments and a repeal pertain to appeals before the appeal tribunals and Board of Review and have nothing whatsoever to do with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and a repeal would impose an insignificant impact on the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules proposed for re-adoption with amendments and a repeal pertain to appeals before the appeal tribunals and Board of Review and have nothing to do with housing production.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:20*.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at *N.J.A.C. 12:20* Appendix.

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

SUBCHAPTER 1. ORGANIZATION OF BOARD OF REVIEW

12:20-1.1 Membership

The Board of Review shall consist of three members appointed by the Assistant Commissioner who is responsible for the administration of the Unemployment Compensation Law and subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from [Department of Personnel] **Civil Service Commission** eligible lists.

SUBCHAPTER 2. ORGANIZATION OF APPEAL TRIBUNALS

12:20-2.1 Membership

Appeal tribunals shall consist of a single member who shall be a salaried examiner appointed by the Director subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from [Department of Personnel] **Civil Service Commission** lists.

SUBCHAPTER 3. APPEALS TO APPEAL TRIBUNALS

12:20-3.1 Presentation of appealed claims

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

(c) In computing any period of time, the day of the act or event after which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day [which] **that** is neither a Saturday, Sunday, nor a legal holiday.

(d)-(g) (No change.)

(h) An appeal shall be considered on its merits if it is filed within seven calendar days after delivery of the initial determination or within 10 calendar days after such notification was mailed to the appellant's last known address, with the exception of an appeal filed pursuant to *N.J.S.A. 43:21-55.1*, which shall be considered on its merits if it is filed within 20 calendar days after delivery of the initial determination or within 24 calendar days after such notification was mailed to the appellant's last known address. Delivery of [notification of] an initial [page=322] determination means actual receipt of the determination by the claimant or any interested party to the appeal.

(i) (No change.)

12:20-3.2 Appeal process

The appeal procedures for cases before the [Appeal Tribunals are now to] **appeal tribunals can** be found at *N.J.A.C. 1:12* [and are also appended to the end of this chapter].

SUBCHAPTER 4. APPEALS TO BOARD OF REVIEW

12:20-4.2 Appeal process

The appeal procedures for cases before the Board of Review are found at *N.J.A.C. 1:12* [and are also appended to the end of this chapter].

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES

12:20-5.1 Inspection of decisions

Copies of all decisions of the appeal tribunals and the Board of Review shall be kept on file at the offices of the Board of Review and of the appeal tribunals at Trenton. Such decisions shall be open for inspection but [without] **not** in any manner revealing the names of any of the parties or witnesses involved.