

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### LABOR AND WORKFORCE DEVELOPMENT

#### Notice of Readoption

#### Special Hearing Rules

#### Department of Labor and Workforce Development Hearings

#### Unemployment Benefit and State Plan Temporary Disability Insurance and Family Leave Insurance Cases; Private Plan Temporary Disability Insurance and Family Leave Insurance Cases

#### Joint Readoption: N.J.A.C. 1:12 and 1:12A

Authority: N.J.S.A. 34:1A-3(e); 43:21-6(d), (e), and (f); 43:21-10; 43:21-17; 43:21-25 et seq.; and 52:14F-5(e), (f), and (g).

Authorized By: Lisa James-Beavers, Acting Director, Office of Administrative Law and Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Effective Date: June 8, 2018.

New Expiration Date: June 8, 2025.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, the special hearing rules for unemployment benefit and State Plan temporary disability insurance and family leave insurance cases and private plan temporary disability insurance and family leave insurance cases at N.J.A.C. 1:12 and 1:12A, respectively, were scheduled to expire on July 8, 2018.

The rules establish procedures governing temporary disability insurance cases, family leave insurance cases, and unemployment benefits cases. Aspects of the hearing that are not specifically covered by these special rules are controlled by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

The rules were jointly promulgated by the Office of Administrative Law (OAL) and the Department of Labor and Workforce Development (DOLWD) and have proven an efficient and effective hearing process for the conduct of cases before the DOLWD. The Office of Administrative Law and the Department of Labor and Workforce Development have reviewed the rules and have determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated.

The summary of N.J.A.C. 1:12 appears below.

Subchapter 1 establishes the applicability of the rules, which govern unemployment benefit cases and State Plan temporary disability hearings heard by the Board of Review or appeal tribunals of the Department of Labor and Workforce Development.

Subchapter 2 sets forth definitions of “appeal tribunal,” “appellate body,” “Board of Review,” and “Division.”

Subchapter 5 provides for representation pro se, by an attorney, or by a non-attorney.

Subchapter 9 requires written notice of the hearing, by mail, to the parties at least five days before the hearing. It also sets forth the procedure for requesting adjournments.

Subchapter 10 sets forth the process for requesting production or review of the Division’s records. Such requests must be in writing, clearly state the nature of the requested information, and the reason it is needed; they may be granted to the extent necessary to permit proper presentation of the case. Disclosure of specifically identifiable information concerning workers, employers, or other persons is generally prohibited. Copying and other costs for obtaining information may be assessed and specific charges for transcripts and sound recordings are set forth.

Subchapter 11 sets forth the procedure for issuance of subpoenas and payment of witness fees.

Subchapter 14 specifies the hearing procedure. Hearings shall be open to the public and conducted in a fair and impartial manner. Hearings before the Board of Review may be on the record made before the appeal tribunal or may include the taking of additional evidence. The rules also set forth the consequence of a failure to appear and the process for scheduling and conducting a telephone hearing. The rules provide for the disqualification of members of appeal tribunals. Additionally, the Board of Review, on its own motion, may remove an appeal tribunal decision to itself and may transfer a case from one appeal tribunal to another for hearing and decision.

Subchapter 15 sets forth the rules of evidence. It provides for the admissibility of hearsay evidence provided that the decision must be supported by sufficient, substantial, and legally competent evidence. It sets forth the procedure for entering into stipulations.

Subchapter 18 sets forth the form and content for the decision of the appeal tribunal and Board of Review. It also sets forth a mechanism for reopening Board of Review decisions and for the revision of a statement of facts in order to correct clerical and typographical errors.

A summary of N.J.A.C. 1:12A appears below.

Subchapter 1 establishes the applicability of the rules, which govern private plan temporary disability cases heard by hearing officers of the Department of Labor and Workforce Development pursuant to N.J.S.A. 43:21-50(2).

Subchapter 2 sets forth definitions of “Act,” “Division,” and “hearing officer.”

Subchapter 5 provides for representation pro se, by an attorney, or by a non-attorney.

Subchapter 9 requires written notice of hearing, served personally, by certified or registered mail, or by telegram, to the parties or authorized representatives at least five days before the hearing. It sets forth the procedure for requesting adjournments. It also provides that, after filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle issues and, pending a disposition, a formal hearing shall not be scheduled.

Subchapter 10 sets forth the process for requesting production or review of records of the Division. Such requests must be in writing, clearly state the nature of the requested information, and the reason it is needed. Requests may be granted to the extent necessary to the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligations under the Act.

Subchapter 11 sets forth the procedure for issuance of subpoenas and payment of witness fees.

Subchapter 14 specifies the hearing procedure. It provides that hearings shall be conducted in a fair and impartial manner. The rules also set forth the consequences of a failure to appear and the procedure for withdrawal of a pending complaint. The hearing officer may consolidate proceedings with similar facts and circumstances when it would not be prejudicial to any party. The rules also provide that the facts and issues may be stipulated by the parties.

Subchapter 15 sets forth the form and content of a hearing officer’s decision, service thereof, and the order’s effect, as well as the process for appeal of an order.

Generally, the hearing process provided by these rules has proven to be effective and efficient. The OAL and DOLWD have reviewed these rules and determined them to be necessary, reasonable, and adequate for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.