

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY UNEMPLOYMENT INSURANCE

[R08-128]

PREAMBLE

- 1. Section Affected**
R6-3-5475
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. § 41-1954(A)(3)
Implementing statutes: A.R.S. §§ 23-772(A), 41-1954(A)(1)(a)
- 3. The effective date of the rules:**
June 14, 2008
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 2568, July 21, 2006
Notice of Rulemaking Docket Opening: 13 A.A.R. 2592, July 20, 2007
Notice of Emergency Rulemaking: 12 A.A.R. 3808, October 13, 2006
Notice of Emergency Rulemaking Renewal: 13 A.A.R. 1139, March 30, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 1078, March 30, 2007
- 5. The name and address of agency personnel with whom persons may communicate regarding this rule:**
Name: Beth Broeker
Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005
Telephone: (602) 542-6555
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Arizona Department of Economic Security administers the state Unemployment Insurance (UI) program, authorized under Titles III and IX of the Social Security Act, the Federal Unemployment Tax Act, and Arizona Revised Statutes, Title 23, Chapter 4.
This rulemaking will allow the Department to accept initial and weekly claims through the internet. Second, it will allow the Department to limit the available methods of filing, due to budgetary restrictions or program needs. Finally, the rulemaking describes how the Department will notify the public of the currently available method or methods of filing.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

This rulemaking will not significantly impact small business or consumers. It will add internet filing to the available methods of filing UI claims. In addition, the rule allows the Department to restrict the available methods of filing due to budgetary constraints or program need. If so, it will still be possible for all workers to file a claim, and the Department will notify workers about the then available method or methods of filing.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Minor typographical, grammatical, or clarifying changes have been made at the suggestion of G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Department received no comments about this rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rule:

None

Was this rule previously made as an emergency rule:

Yes, this rule was previously made as an emergency rule.

Notice of Emergency Rulemaking: 12 A.A.R. 3808, October 13, 2006

Notice of Emergency Rulemaking Renewal: 13 A.A.R. 1139, March 30, 2007

15. The full text of the rule follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY

UNEMPLOYMENT INSURANCE

ARTICLE 54. BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT

Section

R6-3-5475. Claims and Registration

ARTICLE 54. BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT

R6-3-5475. Claims and Registration

A. Definitions. In this Article:

1. "Department" means the Arizona Department of Economic Security, and any other entity that has an agreement with the Department to provide unemployment insurance and reemployment services.
2. "Itinerant service" means unemployment insurance claims service on a regularly scheduled, but less than full-time basis to a locality not within a reasonable commuting distance of an established, full-time claims office.
3. "Personal Identification Number" means a four-digit number selected by the claimant and entered by the claimant into the unemployment insurance telephone claims filing system.

B. Initial claims. A person claiming unemployment insurance benefits shall:

1. File an initial claim with the Department:
 - a. In writing, using an application provided by the Department at an office that accepts unemployment insurance claims. A claimant may also request and submit an application by mail; ~~or~~
 - b. By telephone, using a toll-free number provided by the Department via the Department's web site, local telephone directories, and informational flyers; ~~or~~
 - c. By internet, using the service maintained for that purpose on the Department's web site.
2. The Department may limit the available methods of filing according to budgetary constraints or program needs. The Department shall provide information on how to file an initial claim on its web site, in its employment offices, and in employment offices operated by other public agencies throughout the state.
- ~~2-3.~~ Include the following information on the initial claim:

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- a. ~~The claimant's personal~~ Personal identifying information about the claimant, including name, aliases, birth date, address, telephone number, occupation, ~~social security~~ Social Security number, and citizenship status;
 - b. The claimant's employment history, including identifying information on the claimant's last employer, the claimant's last date of work, and the reason for the claimant's separation from employment; or a statement as to whether the last work was part-time;
 - c. A statement that the claimant is totally or partially unemployed, and information on the claimant's potential for employment, including:
 - i. A description of the circumstances under which the claimant is willing to accept employment; and
 - ii. The claimant's restrictions to accepting employment;
 - d. A statement of other benefits the claimant has obtained or is seeking, including workers' compensation, ~~social security~~ Social Security, retirement benefits, unemployment benefits from another state, and employment benefits such as accrued vacation pay;
 - e. An acknowledgment that the claimant may be subject to penalty for provision of false statements or information; and
 - f. The claimant's signature or personal identification number.
- C. Registration; exemptions. A claimant who files a claim satisfies the registration for work requirements of A.R.S. § 23-771(A)(1). The Department shall not require further registration efforts by a claimant who:
1. Is unemployed due to a labor dispute at the establishment of the claimant's employer, but intends to return to work for the employer when the dispute ends;
 2. Is temporarily laid off from employment for a known duration of not more than 30 days and has been notified of the date to return to work;
 3. Is residing in a geographic area in which the Department does not provide placement services;
 4. Is registered for work with a labor union through which workers in the claimant's occupation normally obtain work;
 5. Is enrolled in a training course that meets the requirements of A.R.S. § 23-771.01. and A.A.C. R6-3-1809; or
 6. Is laid off from employment because of the seasonal nature of the claimant's occupation, and the Department has determined that no current placement opportunities exist for the claimant. When the season for the claimant's occupation resumes, the claimant shall register with the Department's employment service.
- D. Effective date of claim. Except as otherwise provided in this Section, an initial claim for benefits is effective on the ~~1st~~ first day of the calendar week in which the claimant files a claim.
1. An initial claim for benefits filed at a biweekly itinerant service point is effective on the ~~1st~~ first day of the prior calendar week if the claimant's unemployment began in that week and the claimant reported to file the claim at the itinerant service point on the next regularly scheduled service date.
 2. An initial claim filed by mail is effective on the ~~1st~~ first day of the calendar week in which the claimant requests the claim forms, if the claimant returns the completed forms within 7 seven days of the date that the Department mailed or provided the forms to the claimant. In all other cases where the claimant files by mail, the effective date is the ~~1st~~ first day of the calendar week that the claimant mails in which the completed forms are mailed to the Department. The mailing date is the ~~date shown on the envelope~~ postmark date.
- E. Earlier effective dates. The Department may give the claim an effective date earlier than the dates described in subsection (D) if:
1. The claimant shows that the Department gave the claimant incorrect information that caused the claimant to delay filing the claim;
 2. The claimant was unable to timely file a claim because the Department did not provide accessible claim services; or
 3. The claimant filed a timely claim against another state and:
 - a. ~~the~~ The claim was later cancelled or denied; or
 - b. ~~the~~ The claimant did not qualify for benefits in the other state.
- F. Cancellation of claims. At the request of a claimant, the Department may cancel a claim that has established a benefit year if: in any of the following circumstances:
1. ~~If the~~ The claimant:
 - a. Has filed a combined wage claim; or
 - b. Has sufficient wage credits in another state to qualify for a claim; and
 - c. Requests cancellation within 15 days of the most recently issued monetary determination; and
 - d. Repays, or agrees to repay, any benefits received from the Arizona claim;
 2. ~~If the~~ The claimant is ineligible for benefits because the claimant earned wages in the base period from an employer who contributed to or maintained the claimant's pension plan, and the wages will not be in the base period of a subsequent claim;
 3. ~~If the~~ The claimant:
 - a. Initiates a claim during the final week of a benefit calendar quarter;
 - b. Will be eligible for a higher weekly benefit amount in the following benefit calendar quarter; and
 - c. Requests cancellation within 7 seven days of the start of the new benefit calendar quarter;

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4. Except as provided in subsections (F)(1) through (3), if the claimant initiates a claim but does not file for a week of unemployment, and the claimant will qualify for a higher weekly benefit amount in a subsequent benefit calendar quarter; or
 5. ~~If the~~ The claimant shows that the Department provided the claimant with incorrect information regarding the claimant's potential eligibility at the time the claim was initiated.
- G.** Continued claim for benefits. Except as otherwise provided in A.R.S. §§ 23-761 through 23-766 and R6-3-1405 and R6-3-1809, for each week of unemployment claimed, a claimant shall timely file a continued claim for benefits; or waiting period credit, on a form provided by the Department, ~~or by telephone, or through the internet.~~
1. The Department may limit the available methods of filing these claims according to budgetary constraints or program needs. The Department shall provide each claimant with instructions on how to file continued claims at the time the initial claim is filed.
 - ~~1-2.~~ A continued claim shall include the following information for the applicable claim period:
 - a. A statement of any employment the claimant held and any wages the claimant earned;
 - b. A statement as to the claimant's ability to work, availability for work, and efforts to seek work;
 - c. A statement as to whether the claimant received or refused any offers of work;
 - d. A statement that the claimant understands and acknowledges that the claimant has a duty to notify the Department of changes in any circumstances that may affect the claimant's eligibility for benefits; and
 - e. The claimant's signature or personal identification number.
 - ~~2-3.~~ A claim is timely filed when the Department receives the claim within 14 days of the benefit week ending date. If the claim is mailed, the claim is timely if postmarked within 14 days of the benefit week ending date.
- H.** Untimely claims. The Department shall disallow an untimely claim unless
1. The untimeliness was due to Department error; or
 2. The claimant establishes good cause for the untimeliness. As used in this Section "good cause" means that the untimeliness was due to a circumstance beyond the reasonable control of the claimant.
 3. Notwithstanding any other provision of this Section, when the untimely claim is the ~~1st~~ first occurrence in a benefit year, the Department shall not disallow the claim unless the Department finds that the untimeliness was willful. Willfulness is established if:
 - a. The claimant files the claim more than ~~7~~ seven days after the 14-day period specified in subsection ~~(G)(2)~~ (G)(3), and
 - b. The Department has clear and convincing proof that the claimant knew of the filing requirements and deliberately ~~elose~~ chose to ignore them.
- I.** Adjudication and eligibility interviews.
1. The Department may require a claimant to participate in a:
 - a. ~~Participate in a determination~~ Determination fact-finding proceeding, if an issue arises regarding eligibility; or
 - b. ~~Participate in a periodic~~ Periodic eligibility review, if a claimant has claimed benefits for at least two weeks.
 2. The Department shall give the claimant not less than ~~5~~ five calendar ~~days'~~ days prior written notice if it schedules a proceeding or review.
 3. Except as otherwise provided in this subsection, a claimant who fails to report in person or be available via telephone, ~~as on a scheduled, for a proceeding or interview date~~ is ineligible for benefits for the week in which the appointment was scheduled, until the claimant reports to the Department.
 - a. The Department shall not hold the claimant ineligible if:
 - i. The claimant reports within ~~3~~ three work days of the scheduled interview; or the end of the same calendar week, whichever ~~1st~~ first occurs; or
 - ii. The claimant ~~had~~ has good cause for the failure to report.
 - b. As used in this subsection, good cause includes the following circumstances:
 - i. The claimant was ill,
 - ii. The claimant lacked transportation to the appointment,
 - iii. The claimant had a job interview or work that precluded the claimant from keeping the appointment, or
 - iv. Other similar circumstances beyond the reasonable control of the claimant.
- J.** Reemployment services.
1. The Department may require a claimant to participate in a reemployment service program if the Department determines that the claimant:
 - a. Is likely to exhaust regular unemployment compensation benefits; and
 - b. Needs job search assistance services to make a successful transition to new employment.
 2. If a claimant who is required to participate in reemployment services fails to report to a reemployment service provider, or to fulfill the requirements of the claimant's reemployment service plan, the claimant is ineligible for benefits for the week during which the act of non-participation occurred, unless the claimant establishes good cause for non-participation. Good cause includes the circumstances listed in subsection (I)(3)(b).