

# 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

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 29, 2009.*

[R11-46]

#### PREAMBLE

- |   |  |
|---|--|
| <b>1. <u>Sections Affected</u></b><br>R6-3-1407 | <b><u>Rulemaking Action</u></b><br>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. §§ 23-772(A), 41-1954(A)(1)(a) and 41-1954(A)(3)  
Implementing statutes: A.R.S. §§ 23-772(B) and 23-727(D)
- 3. The effective date of the rules:**  
May 3, 2011  
The Department requests that the rule become effective immediately upon filing with the Office of the Secretary of State. This is consistent with A.R.S. § 41-1032(A)(4), which allows for the adoption of a rule that provides "... a benefit to the public and a penalty is not associated with a violation of the rule." This rule allows an employer to respond to a notice electronically, which is a benefit to the employer. The rule contains no penalty.
- 4. A list of all previous notices appearing in the Register addressing the final rule.**  
Notice of Rulemaking Docket Opening: 14 A.A.R. 2042, May 23, 2008  
Notice of Proposed Rulemaking: 14 A.A.R. 2032, May 23, 2008  
Notice of Supplemental Proposed Rulemaking: 14 A.A.R. 4189, November 7, 2008  
Notice of Rulemaking Docket Opening: 16 A.A.R. 925, June 11, 2010  
Notice of Proposed Rulemaking: 16 A.A.R. 1940, October 1, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Beth Broeker  
Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, AZ 85005  
or  
Department of Economic Security  
1789 W. Jefferson St., Site Code 837A  
Phoenix, AZ 85007  
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. A.R.S. § 23-772 requires that all base period employers be promptly notified when an individual files an initial claim for unemployment insurance. In conjunction with this statute, R6-3-1407 currently stipulates that the Department will mail a Notice to Employer to all base period employers, including the last employer, to notify these employers that a former employee has filed for unemployment insurance. R6-3-1407 further states that if an employer returns a Notice within 10 days after the date of mailing with a signed statement of facts that may affect the claimant's eligibility for benefits or information on the issue of separation, the employer will be an interested party to any determination made on the supplied information.

The Department developed a system that can transmit the Notice to Employer electronically. The new process also allows the employer to respond to the Notice electronically. The amendment will maintain the substance of the current language applicable to mailed notices, but provides for the electronic transmittals. This rulemaking is in response to the Department's five-year-review report on Chapter 3, approved by Council on June 5, 2007.

**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:**

None

**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:**

There will be a positive impact for both small and large businesses that participate in the program to receive and return the Notice to Employer electronically. Electronic transmission results in a savings on postage and handling. It also provides the employer with an extra day or two to gather information and prepare a response.

There will be no impact on workers who apply for unemployment insurance benefits.

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

The word "the" was added R6-3-1407(A)(2)(b) to modify the word "date," to correct a clerical error.

Minor typographical and grammatical changes were made at the request 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 on 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 rules:**

None

**14. Was this rule previously made as an emergency rule?**

Not applicable

**15. The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY  
UNEMPLOYMENT INSURANCE

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

Section

R6-3-1407. Interested Parties Party

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

**R6-3-1407. Interested Parties Party**

A. Interested parties An interested party to a benefit or chargeability determination is or a chargeability determination are:

1. A claimant whose right to benefits is affected.

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2. A claimant's most recent employing unit or employer, or any base period employer, if the employer:
    - a. Returns the Department's Notice to Employer, with a signed statement of facts ~~which~~ providing information that may affect the claimant's eligibility for benefits, or information on the issue of separation from employment, within 10 business days after the date the Department mails the Notice of the date on the Notice to Employer the Department mails to the employer's address of record; or
    - b. Responds electronically to the Department's Notice to Employer within 10 business days of the date the Department transmits the Notice to the employer's electronic address on file, provided the response contains:
      - i. A statement of facts providing information that may affect the claimant's eligibility for benefits or information on the issue of separation from employment with the employer.
      - ii. The last date worked for this employer, and
      - iii. The name of the individual responsible for providing this information; or
    - ~~b-c.~~ Makes a bona fide offer of work to the claimant during a week for which the claimant files a claim for benefits, and sends the Department written notification of the offer within ~~5~~ five business days of the date the employer makes ~~of~~ the offer.
  3. The claimant's most recent employing unit or employer, when the claimant is disqualified on the basis of the claimant's separation from employment with the employing unit or employer.
- B. The Department shall make a previously excluded party an interested party to a decision involving whether wages are usable for a claim ~~whenever~~ when the Department determines that the decision could adversely affect the excluded party.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY  
UNEMPLOYMENT INSURANCE

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 8, 2010.*

[R11-47]

PREAMBLE

1. Sections Affected Rulemaking Action  
R6-3-5105 Amend
2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 41-1954(A)(3)  
Implementing statute: A.R.S § 23-727(D), (I), and (J) as amended by Laws 2010, Ch. 197, § 1
3. The effective date of the rules:  
May 3, 2011  
The Department requests that the rule become effective immediately upon filing with the Office of the Secretary of State. This is consistent with § 41-1032(A)(5), which allows for the adoption of "a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process." This rule is being amended to reflect statutory changes that prevent an employer's contribution rate from being affected under certain circumstances.
4. A list of all previous notices appearing in the Register addressing the final rule:  
Notice of Rulemaking Docket Opening: 16 A.A.R. 2405, December 10, 2010  
Notice of Proposed Rulemaking: 16 A.A.R. 2376, December 10, 2010
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Beth Broeker  
Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, AZ 85005

or

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**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

Laws 2010, Ch. 197, § 1 (H.B. 2541) added subsections (I) and (J) to A.R.S. § 23-727. This new legislation provides that an employer's unemployment insurance experience rating account shall not be charged for benefits paid to a former worker who was terminated because:

- The employer was called into active military duty; or
- A former employee of the employer returned to work for the employer after being called into active military duty, thus replacing the former worker now filing for unemployment insurance benefits.

The amendment to R6-3-5105(B) will accomplish the intent of this legislation by adding these two reasons for separation to the list of terminations that shall be considered a discharge for compelling personal reasons not attributable to the employer. A.R.S. § 23-771(D) provides that employers will not be charged for separations that are determined to be for compelling personal reasons not attributable to the employer.

**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:**

None

**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:**

No unemployment insurance benefits come from general state revenues. Benefits not charged to specific employers' experience rating accounts are taken from the general state unemployment insurance trust fund. However, the Department anticipates that the number of separations falling within the two categories covered by the new statute and this rule change will be quite insignificant. Thus, the impact on the state unemployment insurance trust fund will be negligible.

Any employer who has a worker who is terminated under one of these two conditions will benefit from the rule change, because the employer's experience rating account will not be charged for benefits paid to the worker. Prior to this rule change, the separation would be considered a discharge for reasons other than misconduct and the employer's account would be charged for benefits paid to the worker.

Claimants filing for unemployment insurance will not be impacted by the new statute and the resulting rule change, as they would be eligible with or without the changes.

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

The Department has made two non-substantive changes since the publication of the Notice of Proposed Rulemaking. In R6-3-5105(B)(1), the Department added the following language: "...not attributable to the employer," for consistency with the stem of subsection (B). Also, the Department repealed the original language in subsection (B)(4) to improve clarity.

Minor typographical and grammatical changes were made at the request 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 on 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 rules:**

None

**14. Was this rule previously made as an emergency rule?**

Not applicable

**15. The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY  
UNEMPLOYMENT INSURANCE

ARTICLE 51. DISCHARGE BENEFIT POLICY

Section  
R6-3-5105. General

ARTICLE 51. DISCHARGE BENEFIT POLICY

**R6-3-5105. General**

- A.** No change
1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
      - i. No change
      - ii. No change
  2. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
- B.** Discharge for a compelling personal reason not attributable to the employer.
1. The Department ordinarily restricts the determination of a separation from work for compelling personal reasons not attributable to the employer to circumstances that have no direct relationship to a worker's employment and ~~when a~~ the worker left employment for a cause beyond the worker's control. However, the Department may make a determination that the worker was discharged for a compelling personal reason not attributable to the employer when the employer discharged the worker under subsections (B)(2), ~~and (B)(3)~~ (3), and (4).
  2. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
  3. No change
  4. The Department shall determine that a discharge was for a compelling personal reason not attributable to the employer if:
    - a. The worker's employment was terminated because the worker's employer was called into active duty in the military; or
    - b. The worker's employment was terminated because a former employee of the employer returned to work for the employer after having been called into active duty in the military, displacing the worker.
  4. ~~For the purposes of this Section, the definitions of "compelling personal reasons," and "not attributable to the employer" are the same as R6-3-5005.~~