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October 28, 2002

Attn: Kelly K. Smith, Assistant Counsel
Office of Chief Counsel
Labor and Industry Building, 10th floor
7th and Forster Streets
Harrisburg, PA 17121

Re: Proposed regulations governing UC appeals

Dear Ms. Smith:

This letter contains comments on the proposed regulations that would revise Sections 101.81 and 101.82 of the regulations of the Unemployment Compensation Board of Review ("the Board"), governing the filing of appeals. The proposed regulations were published at 32 Pa.B. 4720 (September 28, 2002). These comments are submitted on behalf of the legal services community, which represents claimants in unemployment compensation matters.

Overall, we support the concept of the proposed amendments — to broaden permitted methods of filings appeals. Between Commonwealth Court decisions narrowly construing the rules on timeliness of appeals, the closing of the local offices, and the very short 15-day period for filing an appeal, the circumstances under which an appellant could be certain that he or she were filing an appeal in a timely manner have become much too restrictive. It will help tremendously to have a greater sense of certainty that a party's method of appeal filing will be adequate.

However, we do not think that these proposed regulations go far enough. As explained below, we think that the entire set of unemployment compensation regulations should be revised to reflect the new methods of administration that have gone into effect in the Pennsylvania over the last several years. We also believe that regulations should rectify the inequity that under present practice, employers can have an indefinite period to contest the payment of benefits, whereas claimants are held to a strictly enforced 15-day appeal period for a determination against them. In addition to these two major points, we also have technical comments on the proposed regulations as drafted.

The UC regulations need a thorough revision.

The proposed changes on appeals should just be the beginning of a regulatory overhaul of the UC rules. In the past several years, the entire claims and appeals processing systems have changed. These changes include:

- The closing of the "local offices" and the implementation of the U.C. Service Centers ("the UCSCs"). No longer can claimants walk into an office in their communities to handle their UC business. Rather, they must communicate with regional UCSCs, which they are forbidden to visit in person. This communication is primarily by telephone, although documents can also be submitted by fax or mail to the UCSCs. The first UCSC was opened in November 1999; the last UCSCs were implemented in October 2001.

- Internet initial claims filing, an alternative to calling the UCSCs, commenced in January 2001.

- "Pennsylvania Teleclaims" or "the PAT system," an automated telephone system for filing "continuing" bi-weekly claims by entering data through the keypad, has replaced either reporting to a UC office or submitting mail claims (except for rare cases in which mail claims are permitted, such as for some limited English proficient claimants).

This implementation of the technology-based systems in lieu of local offices has not been accomplished through regulations. To the contrary, the existing regulations refer throughout to the local offices, which no longer exist, and either permit or require claimants to show up in person. See, for instance, the following non-exclusive list:

- Section 65.1 (defining "registered for work" and "registration for work" as appearing in person at a public employment office);

- Sections 65.13 and 65.33 (providing for pre-dating of claims if the office is inaccessible);

- Section 65.31 (requiring that claims be filed in person at local offices);

- Section 65.41 (procedure for filing applications for benefits); and

- Section 65.63 (providing for filing of appeals at public employment offices).

In addition to correcting these obsolete regulations, new regulations should govern the operations of the UCSCs and the PAT system, in which claimants have encountered a myriad of operational difficulties since their openings. For instance, these problems have include the following:

- During periods of high call volume or technological problems, claimants have not been able to get through to the UCSCs. The regulations should specifically state that backdating will be provided in those circumstances.

- Claimants have called the PAT system to file initial applications, and the recording does not inform them that they are calling the wrong number to initiate a new claim. Backdating should also specifically be allowed in those circumstances.

- Claimants have experienced difficulties in using the PAT system, sometimes resulting in lost weeks of benefits. Such problems should also be rectifiable through backdating of claims.

- Appeals and other documents have been misplaced (see below). Regulations should require that appeals and other documents be stamped and docketed the date they are received.

- Claimants who need in-person help have been unable to receive it. Assistance should be made available at some point in the workforce investment system, such as in the Career Links.

- Persons with limited English proficiency have fared especially poorly in the UCSC/PAT systems. Their particular needs should be addressed in detailed regulations covering the handling of their claims and appeals. Accommodations of this population are required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

- Claims have languished in the UCSCs for lengthy periods of time, in violation of the "when due" requirement of the Social Security Act, 42 U.S.C. § 503(a)(1). The regulations should contain time frames for prompt payments, as there are in federal law. See 20 C.F.R. Part 640.

In our view, the failure to implement properly promulgated regulations violates the Commonwealth Documents Act, 45 P.S. §§ 1102-1602. Moreover, under the rationale of Knisely v. Unemployment Compensation Board of Review, 501 A.2d 1180 (Pa. Commw. 1985), Commonwealth Court may well question the legal integrity of a UCSC system not governed by regulations when operational issues make their way to that court. Ample time has passed since the implementation of the new technology for the regulations to be updated. We urge the Board and the Department to revise the remainder of their regulations to reflect the new administrative regime at the earliest possible date.

Both claimants and employers should have 15 days to contest an adverse decision.

While the proposed regulations do concern the filing and dating of appeals, they neglect a glaring inequity between claimants and employers. If a determination is rendered against a claimant, he or she has 15 days to file an appeal, and this short time frame is strictly enforced. However, if the UCSC finds in favor of a claimant when an employer has not initially opposed a claim, benefits are paid without an appealable determination. If the employer decides to contest the claim after benefit payments have begun – which sometimes happens months later – the UCSC will issue a determination ruling against the claimant well beyond 15 days of the initial decision to pay benefits. While both claimants and employers have 15 days to appeal an adverse determination, the fact that no determination is rendered upon payment of benefits in these cases means that the employers actually have a much longer period to contest the *de facto* decision of the UCSC to grant of benefits.

Under the current practice, the UCSCs do not enforce a time period for employers to respond to a claim. When an employer does not respond promptly, the UCSC often contacts the employer again and continues to wait for a response, to the detriment of the claimant who is experiencing delay and

hardship while waiting for payment. Eventually, the UCSC gives up and starts payment of benefits if the claimant's statement about the basis of the job separation appears not to be disqualifying. However, a written, appealable determination is not rendered under those circumstances. If the employer later decides to contest the claim – or if the UCSC revisits eligibility of its own accord – an appealable determination against the claimant can be issued, benefit payment is stopped, and an overpayment is assessed.

This process lacks the rigor that is expected in an adjudicatory process and is patently unfair. The claimant cannot be sure that his or her claim will continue to be paid, even months after it has begun. Moreover, not only are benefits stopped, but an overpayment is assessed. Legal services advocates have seen many cases of huge overpayments as a result of this process. The process also results in employers not responding to requests for information from the UCSCs until after an adverse decision against them. This not only results in potentially erroneous decisions, but also delays claims decisions as the UCSC staff wait for weeks to see whether an employer will respond.

The regulations should be amended to provide that employers have a specific period of time to respond to a notice of a claim. If they do not, an appealable determination should be rendered. After the 15-day appeal period from the determination, neither claimant nor employer should have further recourse if they have not taken an appeal, nor should the UCSC be able to change its decision. A claimant receiving benefits should be able to rely on finality of the decision at some point.

Specific comments on Section 101.81 - filing of appeal

Proposed **subsection 101.81(a)** provides that "Department-provided appeal forms may be obtained" from various entities. Currently, practice is that appeals form are enclosed by the Department in all UCSC decisions on the merits. ***We strongly urge that the regulation state that an appeals form will be provided by the Department to the party which is adversely affected by a decision***. Particularly given current the lack of face-to-face help, claimants who may have limited literacy skills may not be able to write a letter of appeal on their own, nor should they be required to make unnecessary trips to Career Links in search of an appeals form. However, we oppose the current practice of including appeals forms to parties receiving fully favorable decisions. This has caused confusion among parties who have won and has resulted in pointless appeals, unnecessarily burdening an appeals system that is currently struggling with extraordinary delay problems.

Similarly, we believe that **subsection 101.81(b)** should be modified to provide that information about filing an appeal should be enclosed in adverse decisions, not just made available at Career Links and other offices.

Even more fundamentally, we believe that the regulation should state that the Department is required to inform a party receiving an adverse decision of its right to appeal and how to do so. The natural placement of such language would be at the beginning of the regulation.

We object to the removal of the language in current subsection 101.81(b) which provides that the claimant can receive assistance in completing the appeal form and perfecting the appeal. Even though the Department refuses to allow claimants to seek in-person help at the UCSCs, they are permitting claimants to file appeals at Career Link locations. There is no reason why the Career Links cannot provide at least this limited service to claimants who seek help from them. Moreover, UCSC staff should help with an appeal to the extent possible despite the lack of face-to-face contact with claimants. The failure to provide such help is inconsistent with the stated customer service goals of Pennsylvania's workforce investment system. Moreover, such assistance may be required by the Americans with Disabilities Act or by Title VI if the claimant is disabled or limited English proficient.

Proposed **subsection 101.81(c)** provides that an appeal "shall" contain certain information, such as the social security number of the claimant and the date of the determination. In keeping with subsection (e), which permits a written objection to be considered an appeal, the word "shall" should be changed to "should." In other words, the failure to provide the five elements of information enumerated in subsection (c) should not invalidate the appeal. Flexibility in this regard is particularly important given that appellants cannot access UCSC staff for face-to-face help with an appeal if needed.

We welcome the amendment of **subsection 101.81(d)** to require the Board or Department to docket and process appeals. However, as drafted, proposed subsection 101.81(d) requires the docketing and processing of the "appeal form." To be consistent with the language in subsection (e) that appeals need not be submitted on appeal forms, the word "form" should be dropped from subsection (d).

Additionally, ***we would prefer that the regulation also require the appeals to be stamped and docketed the day received, so that the chance of mistake by the recipient of the appeal is more limited.*** Our experience with the handling of appeals by the UCSCs in the first several years of their operation has been problematic. Mishandled appeals have not been isolated to a single instance or a single UCSC. Our colleagues across the state have told stories of lost appeals. For instance:

- Sam Rosenzweig, who practices in Greensburg, has had two problematic appeals. In one case, his client faxed in an appeal to the local UCSC, but it was misplaced. After a second appeal was filed appealing the timeliness (and existence) of the first appeal, the first appeal was found by the UCSC in a stack of papers. However, the UCSC could not verify when it had been received, as it had not been date stamped, and the UCSC did not keep fax activity sheets by which they would match their receipt with the claimant's fax confirmation from transmission. The referee chose to accept the claimant's fax transmission confirmation anyway.

- In Mr. Rosenzweig's second case, an employer supposedly mailed its appeal on the last day of the 15 days. The UCSC stamped it in three days later. However, they threw away the envelope, so compliance with the existing regulations cannot be ascertained. The referee's hearing on this issue is next week.

- Sharon Dietrich faxed an appeal for a client to the Philadelphia UCSC. When checking on the case later, it turned out that the appeal had been lost. Ms. Dietrich had a fax transmission report showing that it had been faxed by the deadline. Before the UCSC accepted a remand of the appeal, Alan Williamson agreed to provide a UCSC representative to testify at the hearing that the appeal probably had been lost.

- In another case of a lost appeal, a claimant faxed his own appeal to the Philadelphia UCSC on the last day to appeal and had a fax transmission report showing that it had been faxed by the deadline. Hearing nothing in response to his appeal, the claimant called the UCSC about two weeks later, and learned that it had not received the faxed appeal. He was asked to fax in a copy of his appeal, which he did. At the referee hearing, the claimant's appeal was determined to be untimely as his fax transmission report was not accepted as proof of a timely appeal, and in fact, his second fax was introduced, apparently as evidence of his late appeal. Claimant was unrepresented during all of his efforts to obtain benefits.

- Margaret Fried, who practices in Pittsburgh, has encountered the problem of inaccurate dates on the imprinted date/time copy of the faxed appeal on numerous occasions. A decision from a referee hearing is pending in one of these cases in which the referee commented that he understood that incoming faxes are *not stamped as received for several days* because of the quantity of faxes being received at the UCSCs.

Of course, we see just the proverbial tip of the iceberg of these types of problems. We have been told that part of the issue is that the UCSCs receive a great deal of paper, and appeals (and other documents) can get lost in the shuffle. We hope that these problems can be avoided in the future by more rigorous handling of appeals, such as by the establishment of a reliable docketing system.

An administrator from Connecticut has shared with us that state's regulations govern the processing of appeals (see Sections 31-237 g-1(c), g-15 and g-16, enclosed). Section 31-237g-16 provides that immediately upon receipt of an appeal, the appeal shall be stamped with the date and location received. It also requires the office that maintains the records to immediately forward them to the appeals division. We support the codification of such processing requirements in our regulations. We would also add a requirement that the UCSC maintain proof of the date of filing, such as retaining the envelope in which the appeal was sent and maintaining a fax activities report (discussed more below).

We also find the redrafting of **subsection 101.81(e)** to be confusing. We suggest the following language, which is similar to current section 101.82(c)(2):

> The Board will consider a written objection to the Department's determination as an appeal and process it under subsection (c) even if the appellant does not complete the official appeal form, so long as the appellant provides sufficient information to enable the Department to reasonably identify the matter being appealed.

Finally, we suggest that a new subsection be added to provide that the Department has a duty to notify the party which initially prevailed that the other party has taken an appeal.

Specific comments on Section 101.82 - timeliness of appeals

(b)(1) Filing in person

We strongly support that idea that appeals can be filed in person at the Career Links, so long as the Department can insure that these appeals will be carefully docketed, as we suggested above for the UCSCs. We welcome a broader role for the Career Links in providing UC assistance. The regulations should require that the Career Links maintain a rigorous docketing system for recording the date upon which appeals are accepted. Without a rigorous docketing system, we are somewhat concerned that the mishandling of appeals could become a problem at the Career Link offices.

(b)(3) Filing by common carrier

This filing method makes sense and should have adequate integrity. However, the regulation should list which of the more typical common carriers are covered, rather than simply referring to the administrative bodies that regulate them. For instance, we assume that companies such as Federal Express and United Parcel Service would qualify, but why not make clear that they do, so that appellants can know for certain that they have adequately filed their appeals.

(b)(4) Filing by fax

In order to provide a back-up for the imprint on the fax by the recipient (for the possible situations where the imprint is inaccurate, illegible or missing), we believe that the Department and Board should be required to maintain the fax activity sheets and that these sheets be made available to the parties upon request and without the necessity of a subpoena if the date of the appeal is at issue.

A foreseeable problem is that the fax method puts the appellant at the mercy of the Board or Department to insure that the receiving fax machine is programmed for the proper date and time. We do not see how this can be addressed except, again, by solid management by the Department and Board in the docketing of appeals.

The regulation is not specific about the timeliness of faxes sent outside of business hours. We support the idea that a fax can be timely even though it is received on the 15th day after business hours. Faxes should be timely up to 11:59 p.m. The sender bears the risk that a fax sent near midnight will be untimely if the Department or Board's fax machine is programmed several minutes early. However, a fax sent on a Saturday, Sunday or legal holiday should be considered received on the next regular work day. Section 31-237g-1(c) of the Connecticut regulations provide for the acceptance of facsimile transmissions until 11:59 p.m., as well as for the timeliness of faxes received when the office is closed.

(b)(5) Filing by electronic transmission

We assume this means email. Or does it mean over the Department's website, in addition to or in place of email? More specificity than "electronic transmission" would be helpful.

In concept, we support this method of filing. However, we recognize this method also could be affected by the setting of computer clocks and by technological failures. Doubtlessly, we will see some of these issues if this method is adopted. Section 31-237g-1(c) of the Connecticut regulations also provide for the receipt of appeals filed via internet transmissions.

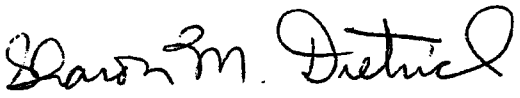
Another cause for concern in this regulation is the phrase "if the electronic record is in a form capable of being processed by that system." What does this mean? What if the sender uses WordPerfect word processing software, while the Department uses Word – will the appeal be rejected? How will "instructions concerning format" be provided, and what happens if there is an incompatibility not addressed by those instructions?

Furthermore, given the ease of responding to an email, we believe that the regulation provide for a reply to confirm that the electronic transmission has been received.

* * * * *

Thank you for considering our input on the proposed regulations. Should you like to discuss any of these matters, please call Sharon Dietrich at **(215) 981-3719.**

Very truly yours,



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EMPLOYMENT SECURITY BOARD OF REVIEW
PROCEEDINGS ON DISPUTED MATTERS PERTAINING TO UNEMPLOYMENT COMPENSATION CLAIMS

ARTICLE I. GENERAL PROVISIONS

Sec. 31-237g-1. Definitions; interpretations

(Statutory reference: 31-237a, 31-237f, 31-222c)

(a) As used in Secs. 31-237g-1 to 31-237g-60 of these regulations inclusive, unless the context clearly indicates otherwise:

(1) "Acting Chairman" means the person serving as Chairman in the absence of the Chairman of the Board of Review.

(2) "Address" means mailing address.

(3) "Administrator" means the Commissioner of the Connecticut Labor Department whose address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and his designated representatives.

(4) "Agent State" means any state in which an individual files a claim for unemployment compensation benefits against another state.

(5) "Aggrieved" means that the given party's interests with regard to the Unemployment Compensation laws are affected by the decision in question.

(6) "Amicus Curiae" means a person, organization or entity permitted to participate in a proceeding of potentially significant precedential value, for purposes of advocating the interests of a constituency which stands to be significantly affected by the decision issued in such proceeding or availing the Appeals Division of specialized knowledge or expertise on the subject involved in such proceeding.

(7) "Appeals Division" means the Employment Security Appeals Division of the Connecticut Labor Department consisting of the Board of Review, the Referees and all supporting staff employed in the Appeals Division for discharge of the Appeals Divisions' responsibilities set forth in these regulations and the Connecticut General Statutes.

(8) "Attorney" means an attorney-at-law admitted to the Connecticut Bar.

(9) "Authorized Agent" means any individual, organization or business that is, pursuant to section 31-237g-11(b) of these regulations, duly authorized by a party to represent such party in a proceeding before the Appeals Division, or that is required to register with the Board pursuant to Sections 31-272-1 to 31-272-18 of the Regulations of Connecticut State Agencies.

(10) "Board" means the Employment Security Board of Review

(11) "Chairman" means the Chairman of the Employment Security Board of Review, whose address is 38 Wolcott Hill Road, Wethersfield, Connecticut 06109.

(12) "Chief Referee" means the Chief Referee of the Referee Section.

(13) "Employment Security Division" means the Employment Security Division of the Connecticut Labor Department.

(14) "Employment Security Office" means the public employment bureau or any other place designated by the Administrator for the filing of unemployment compensation claims pursuant to Section 31-240 of the General Statutes.

(15) "Interstate Appeal" means an appeal wherein a resident of a foreign state has filed a claim with the Connecticut Employment Security Division for unemployment compensation benefits pursuant to Connecticut law.

(16) "Intrastate Appeal" means an appeal wherein a Connecticut resident has filed a claim with the Connecticut Employment Security Division for unemployment compensation benefits pursuant to Connecticut law.

(17) "Liable State" means any state against which an individual files, through another state, a claim for unemployment compensation benefits.

(18) "Party" means the following parties to an appeal:

(A) the claimant whose unemployment compensation claim is involved;

(B) An individual whose potential claim for unemployment compensation benefits is at issue and who is made a party by the Appeals Division;

(C) any employer (1) against whom charges may be made or tax liability assessed due to a decision by the Administrator or the Appeals Division and who has appealed that decision or who is made a party by the Appeals Division; or (2) from whom the claimant's separation is an issue in the appeal;

(D) the Administrator.

(19)"Referee" means an Employment Security Appeals Division Appeals Referee Trainee, Associate Appeals Referee, Principal Appeals Referee, or Chief Appeals Referee.

(20) "Referee Section" means the organizational unit consisting of the Referees and all supporting staff employed for the discharge of the responsibilities assigned Referees pursuant to these regulations and the Connecticut General Statutes.

(21) "Principal Referee" means a Principal Appeals Referee.

(22) "Staff Assistant" means the Staff Assistant to the Board as defined in Section 31-237e(b) of the General Statutes.

(b) As used in these regulations, unless the context clearly indicates otherwise, the present tense includes the past and future tenses, the future tense includes the present, each gender includes the other two genders, the singular includes the plural, the plural includes the singular.

(c) In regard to timeliness, unless otherwise specified in these regulations, the date on which a document is "filed" is the date on which such document is actually received by the office authorized and designated to receive such document, provided that a document filed by facsimile transmission (fax) or Internet shall be considered received on a regular work day if the Appeals Division or Administrator's receiving fax machine or computer indicates that it was received no later than 11:59 pm on that day. A fax or Internet transmission received on a weekend or legal holiday shall be considered received on the next regular work day. A party filing a document by fax shall retain its fax transmission receipt and the original copy of the document for inspection by the Appeals Division. A party filing a document by Internet shall produce a hard copy for inspection when requested by the Appeals Division. Any document filed by fax or Internet shall contain a certification pursuant to Section 31-237g-10(a)(7) of these regulations describing how and when a copy of the document was provided to all other parties.

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Sec. 31-237g-2. Appeals Division

(Statutory reference: 31-237b, 31-237c, 31-237e, 31-237f, 31-237g, 31-249d)

(a) The Appeals Division controls the administrative appellate system for adjudicating appeals from determinations of the Administrator and consists of the Board of Review and the Referee Section. The Referee Section shall be subject to the Board's administrative direction, supervision and control. Subject to the provisions of Chapter 67 of the Connecticut General Statutes, the Board may appoint such employees in the Appeals Division as it deems necessary to carry out the responsibilities of the Appeals Division provided the Board shall appoint a Staff Assistant to the Board. In the performance of its duties the Appeals Division is autonomous and separate from the Administrator.

(b) The Board shall undertake such investigations as it deems necessary and consistent with the provisions of Chapter 567 of the Connecticut General Statutes. The Board shall consist of three members appointed by the Governor, one of which shall be designated as Chairman of the Board of Review. Such Chairman shall be in the classified service and devote full time to the duties of his office. The other two members appointed to serve during the appointing Governor's term of office shall be a representative of employers and a representative of employees and shall devote full time to the duties of their offices. The members of the Board representing employers and employees shall be selected as representatives based upon previous vocation, employment or affiliation. A member of the Board may be removed by the Governor for cause pursuant to the Connecticut General Statutes. Any vacancy on the Board shall be filled by appointment by the Governor. In the case of a disqualification of a Board member, or at any time a member of the Board is incapacitated to serve, an alternate member appointed by the Governor shall serve in place of the Board member, provided that the alternate member so appointed shall represent the same interest as the board member in whose place he serves. The Board may, at its option, require alternate members to sit with it in the fulfillment of any function of the Board. The Staff Assistant shall be qualified, by reason of his training, education and experience, to carry out the duties of the position, which include, but are not limited to, performing legal research for the Board, advising Referees on legal matters relating to procedural and substantive problems of hearings and appeals, assisting the Chairman in preparing legislative amendments to unemployment compensation law pertaining to appellate matters, serving

hand-delivered copy shall sign a receipt for such delivery which shall become a part of the file record.

(b) An Appeals Division file record which indicates that a copy of a notice or decision was, pursuant to subsection (a) above, (1) mailed by the Appeals Division on a certain date to a properly named and addressed party, attorney or authorized agent, and (2) not returned as undeliverable by the U.S. Postal Service, shall create a rebuttable presumption of the proper delivery and receipt of such notice or decision.

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ARTICLE II.
APPEALS TO THE REFEREE

Sec. 31-237g-14. Appeal to the Referee; resources

(Statutory reference: 31-238, 31-241, 31-249c, 31-244a)

The Administrator shall provide, at each Employment Security office, a copy of these regulations; electronic access to Board decisions through an indexing system; any hard copy indexes, manuals, outlines or similar compilations of Board decisions that the Board maintains; and a sufficient supply of forms prescribed by the Board for the filing of appeals for use by parties desirous of appealing decisions of the Administrator or the Appeals Division.

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Sec. 31-237g-15. Appeal to the Referee: time and place for filing; jurisdiction of Referees

(Statutory reference: Secs. 31-241 and 31-237j)

(a) Except as otherwise provided by law, the Administrator's decision shall be final unless a party aggrieved by the decision files, within twenty-one days after the date such decision was mailed to such party's last-known address, an appeal to the Referee with an office of Employment Security, the Appeals Division or any similar employment security agency of any other state in which such party is located at the time of filing. The appeal rights of an employer shall be limited to the first notice such employer is given in connection with a claim which sets forth his appeal rights. Any appeal may be filed in person, by facsimile transmission (fax), by Internet or by mail but to be acceptable as a timely filed appeal it must actually be received at such office no later than the twenty-first (21) calendar day following the date on which the Administrator's determination was mailed, must bear a legible United States postal service postmark which indicates that within such twenty-one day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by Internet as set forth in Section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of

appeals filed by mail. If said twenty-first (21) day falls on a day when the office in which the appeal was filed was not open for business, then such last day shall be extended to the next business day of such office. It is generally advisable, to the extent that it can be accomplished within the allotted twenty-one day period, to file such appeal with the specific Employment Security office which rendered the decision. Any appeal filed after the twenty-one day period has expired may be considered to be timely filed if the filing party shows good cause for the late filing.

(b) For purposes of this section, a party has good cause for failing to file an appeal within twenty-one (21) calendar days of the issuance of the Administrator's determination if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the Referee shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the Appeals Division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing an appeal once the reason for the late filing no longer existed:

(ix) Where there is substantial prejudice to an adverse party which prevents such party from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its appeal.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause the Referee shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the appeal is excessively late, and whether the party otherwise acted with due diligence.

(c) The Referees shall have jurisdiction over appeals from all determinations made pursuant to chapter 567 of the Connecticut General Statutes, including appeals from determinations regarding employer tax liability, except those involving only a determination of the amount of contributions due made pursuant to Section 31-270 of the General Statutes, or pursuant to directives of the United States of America and the Secretary of Labor of the United States. Unless otherwise specifically provided by statute or regulation, the appeal period for all such determinations shall be as set forth in subsection (a) and (b) of this section.

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Sec. 31-237g-16. Processing of appeal to the Referee

(Statutory reference: 31-237h, 31-238, 31-249c, 31-244a)

(a) Each appeal to the Referee from a decision of the Administrator shall be filed by the use, pursuant to the instructions contained thereon, of the form prescribed for such purpose and available at each Employment Security office or by means of a document which clearly indicates a desire for appellate review of such decision and which should be prepared in substantial compliance with the guidelines set forth in Section 31-237g-10(a) of these regulations.

(b) Immediately upon receipt of an appeal to the Referee the Employment Security office involved shall:

(1) stamp the front page of the appeal, and the front page of all supplemental documentation accompanying the appeal, to indicate the date and the office where such appeal was filed;

(2) if necessary, forward such appeal, and all documentation accompanying the appeal, to the Employment Security office maintaining the file records concerning the Administrator's decision involved.

(c) Immediately upon receipt of an appeal to the Referee at the Employment Security office maintaining the file records concerning the Administrator's decision involved, such Employment Security office shall provide to such Appeals Division office as the Appeals Division shall direct to be the appropriate office for prompt processing of such appeal: the original appeal together with all the information, documentation and records which the Appeals Division reasonably requires for the prompt and proper disposition of the appeal by the Appeals Division. The Employment Security office involved shall maintain duplicate copies of all such documentary file records provided to the Appeals Division.

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Sec. 31-237g-17. Scheduling of hearing; intrastate; interstate; telephone hearing; notice of hearing

(Statutory reference: 31-237j, 31-242, 31-244a)

(a) Upon receipt of an intrastate appeal to the Referee Section from a determination of the Administrator, the Referee Section shall assign the appeal a case number and promptly schedule a hearing upon such appeal at a location and in a manner that is reasonably convenient for the parties. In the scheduling of such hearings primary consideration shall be given to the goal of prompt disposition of appeals, the normal hours, days of the week and locations established for conducting

PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY
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October 21, 2002

Ms. Kelly K. Smith
Assistant Counsel
Office of Chief Counsel
Department of Labor and Industry
10th Floor, Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17121

Dear Ms. Smith:

On behalf of the over 10,000 business members of the Pennsylvania Chamber, we thank you for the opportunity to provides comments regarding the proposed rulemaking by the Department of Labor and Industry and the Unemployment Compensation Board of Review (34 PA. Code Ch. 101) as it appeared in the Pennsylvania Bulletin on September 28, 2002 (32 Pa. B. 4720).

The proposed rulemaking, as it pertains to appeals from determinations by the Department, would result in a more flexible and efficient appeals process. Specifically, the rulemaking would revise the manner in which parties may file appeals and allow for various means of filing appeals, including fax, common carrier services, and electronic submission. In addition, it would establish a uniform standard for determining the date of filing and timeliness of appeals or notices of appeal.

While the proposed regulations are a step in the right direction, the only concern is that, with regard to faxed appeals, the regulation does not reference a confirmation of a fax generated by the fax machine from which the information was sent.

If you should have any questions or require additional information, please do not hesitate to contact Brian Kelly of the Chamber staff at 720-5569.

Sincerely,

Fred A. Sembach

Fred A. Sembach
Vice President, Government Affairs

cc: Mr. Scott R. Schalles, Independent Regulatory Review Commission