

ARTHUR COCCODRILLI, CHAIRMAN
GEORGE D. BEDWICK, VICE CHAIRMAN
S. DAVID FINEMAN, ESQ.
SILVAN B. LUTKEWITTE III
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 21, 2010

Honorable Sandi Vito, Secretary
Department of Labor and Industry
1700 Labor and Industry Building
Harrisburg, PA 17120

Re: Regulation #12-74 (IRRC #2846)
Department of Labor and Industry
Unemployment Compensation; Employee Provisions

Dear Secretary Vito:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable John R. Gordner, Majority Chairman, Senate Labor and Industry Committee
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee
Honorable Robert E. Belfanti, Jr., Majority Chairman, House Labor Relations Committee
Honorable Gene DiGirolamo, Minority Chairman, House Labor Relations Committee
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Department of Labor and Industry Regulation #12-74 (IRRC #2846)

Unemployment Compensation; Employee Provisions

July 21, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the May 22, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Labor and Industry (Department) to respond to all comments received from us or any other source.

1. Section 65.41. Filing methods. – Reasonableness; Implementation procedures; Clarity.

Subsection (a)

This subsection allows an application for benefits to be filed in one of four ways: by phone, via the internet, by mail or by facsimile machine. Subsection (b) allows a claim for compensation to be made by phone or via the internet. Why doesn't Subsection (b) allow claims for compensation to be made by mail or facsimile machine?

Subsections (d) and (e)

Subsections (a), (b) and (c) of this section specify acceptable methods for filing applications for benefits, claims for compensation and how filing dates will be determined. The requirements of these subsections establish a binding norm for both the regulated community and the Department. We believe the language in Subsections (d) and (e) inappropriately deviates from that binding norm. Subsection (d) would allow the Department to prescribe additional methods for filing applications and claims and would allow the Department to designate the date on which the application or claim is filed. Subsection (e) would allow the Department to suspend the use of the filing methods for various reasons. If the Department wants to change the filing methods and

how filing dates will be determined, that must be done through the rulemaking process. Therefore, the Department should delete Subsections (d) and (e).

If these subsections are not deleted, we ask the Department why Subsection (e) references Subsections (a), (b) and (d), but does not reference Subsection (c).

2. Section 65.43a. Extended filing. – Reasonableness; Implementation procedures.

Subsection (e) lists reasons for which extended filing will be allowed. A commentator has stated that extended filing should be allowed for people with limited English proficiency and has suggested that language barriers be specifically listed in this subsection. We recognize that one of the reasons in which extended filing would be allowed is, “Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.” However, it is unclear whether a person with limited English proficiency could be granted an extension based on the reason quoted above. The Department should consider addressing limited English proficiency in the final-form regulation.

3. Section 65.73. Full-time work. – Reasonableness; Implementation procedures.

Subsection (a) explains how a claimant’s full-time work will be determined. A commentator believes that Subsections (a)(2) and (3) work to the disadvantage of the claimant and questions how the provisions could be administered. In the Preamble to the final-form regulation, we ask the Department to explain the rationale for these provisions and how it will implement them.

JUL-21-2010 WED 08:22 AM

FAX NO.

P. 01

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Daniel Razansky
Agency: Department of Labor & Industry
Phone: (717) 787-5087
Fax: (717) 783-5225
Date: July 21, 2010
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Labor & Industry's regulation #12-74 (IRRC #2846). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Mary Sue Gallagher **Date:** 7/21/10