

Proposed Rule

Regulation No. 27

EMPLOYER COVERAGE HEARINGS

This regulation is hereby amended, promulgated and adopted by the Director, Arkansas Department of Workforce Services, pursuant to Arkansas Code 11-10-207, 306, 307, 308, 315 and 316 to read as follows:

- (A) The hearing officer in employer coverage matters shall be a person designated as such in writing by the Director. Such designation shall remain in effect until such time as it is revoked in writing by the Director.
- (B) A request for an administrative determination of coverage and administrative hearing under Arkansas Code 11-10-308(a) is deemed timely filed if received by the Office of Administrative Hearings within twenty (20) calendar days of the date of the initial Department of Workforce Services' letter of determination finding the employer liable for unemployment insurance taxes.

If the letter requesting an administrative determination of coverage and administrative hearing is received after twenty (20) calendar days of the date of the initial Department of Workforce Services' letter of determination, there is a rebuttable presumption that the request is untimely filed and therefore, may result in a denial of a hearing on the merits.

- (C) All employer coverage hearings shall be conducted at the administrative office of the Department of Workforce Services in Little Rock by telephone, or in person at the discretion of the hearing officer. The hearing officer shall set the time and date of such hearings, giving reasonable notice to all interested parties. The hearing officer may, upon his own motion or upon request of a party for good cause shown, reschedule the hearing time and/or date provided such request is received prior to the scheduled time of the hearing.
- (D) The hearing officer may require the parties, prior to the hearing, to provide to him and/or to exchange with each other information including, but not limited to, names and addresses of representatives who are to appear; names, addresses, and telephone numbers of potential witnesses; lists and descriptions of exhibits to be introduced; and theories of liability or nonliability, including citations to pertinent statutes and case precedent.
- (E) The hearing officer shall conduct himself in an impartial manner and may at any time withdraw if he deems himself disqualified. Any party may file an affidavit of personal bias or disqualification, which shall be ruled on by the hearing officer and granted if timely made, sufficient, and filed in good faith. If the hearing officer withdraws, he shall so advise the Director in writing. The Director shall then appoint another hearing officer to conduct the hearing from which the usual hearing officer has

disqualified himself.

- (F) The hearing officer shall have power to (1) administer oaths and affirmations, (2) take depositions, (3) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence, (4) maintain order, (5) rule upon all questions arising during the course of a hearing, (6) generally regulate and guide the course of the pending proceeding, and (7) make recommended decisions to the Director.
- (G) Any person or party appearing at a hearing shall have the right to be accompanied and advised by legal counsel.
- (H) The hearing officer shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing shall be conducted in such manner as to ascertain the substantial rights of the parties.
- (I) Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- (J) Official notice may be taken of judicially cognizable facts and of generally recognized technical facts within the agency's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded reasonable opportunity to show the contrary.
- (K) A record shall be kept of all testimony and proceedings, but the testimony will not be transcribed unless the hearing officer's determination is appealed.
- (L) The hearing officer shall issue recommended findings of fact and, on the basis thereof, recommended determinations for the Director's approval and signature with respect to employer coverage.
- (M) If the party which made application for the hearing fails, without good cause shown, to appear at the scheduled hearing, the hearing officer shall admit into the record the relevant Department of Workforce Services' file or files and shall make his determination on the evidence contained therein and any evidence submitted by any interested party or parties who appear for the scheduled hearing.
- (N) In case of refusal to obey a subpoena issued by the hearing officer, such hearing officer shall have the power to continue the hearing, on his own motion or on motion of the party who requested the subpoena, until such time as the person who refuses to obey the subpoena is either ordered to comply with or is relieved of complying with said subpoena by a court of competent jurisdiction.

This Regulation shall take effect and be in force on and after November 1, 2014.