

NOTICE OF PUBLIC HEARING

Pursuant to *Neb. Rev. Stat.* §84-907, notice is given of a public hearing to be held before the Nebraska Department of Labor (NDOL) on July 25, 2022 at 1:00 p.m. at the Nebraska Department of Labor, 500 South 16th Street, 2nd Floor Conference Room, Lincoln, Nebraska. NDOL will receive testimony and evidence concerning the adoption of proposed amendments to regulations related to unemployment insurance benefits:

- 219 NAC 19– Short-Time Compensation Program: clarifies and updates procedures for Short-Time Compensation plans and simplifies the regulation text
- 219 NAC 21– Investigations under *Neb. Rev. Stat.* §48-663.01 TO §48-665.01: establishes a 10-day deadline for a claimant to respond to a notice of proposed findings that NDOL issues during an investigation
- 224 NAC 1– Appeals Procedure: expands the hearing file for unemployment benefit appeal hearings before the Nebraska Appeal Tribunal to include relevant records from the NDOL’s initial adjudication process and simplifies the text of the regulation

A draft of the Regulations and their Fiscal Impact Statements may be obtained at the office of the Secretary of State, Regulations Division, Room 343, State Capitol, Lincoln, Nebraska 68509, telephone number (402) 471-2385, or by contacting the NDOL at (402) 471-9912. Copies will also be available at the public hearing.

Interested persons may attend and testify at the hearing. Written comments may be submitted to the NDOL, Office of Legal Counsel, and P.O. Box 94600, Lincoln, NE 68509-4600 up to three days prior to the date of this hearing.

If auxiliary aids or reasonable accommodations are needed for attendance at this hearing, please call (402) 471-9912.

JOHN H. ALBIN
Nebraska Commissioner of Labor

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - SEPTEMBER 22, 2016

TITLE 219 - DEPARTMENT OF LABOR

CHAPTER 19 - SHORT-TIME COMPENSATION PROGRAM

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-607; 48-672 through 48-683.

002. Definitions

- ~~A.~~ Additional ~~part-time or full-time~~ employee means any person hired to the affected unit if the hiring would increase the number of employees from the number of employees on the application for short-time compensation (STC) plan application.
- ~~B.~~ Available for all usual hours of work means ~~all hours the claimant was actually available for all usual hours of work or on approved leave.~~
- ~~C.~~ Change means ~~any deviation from the plan that affects only one individual or any deviation from the plan that affects an entire unit or units to last for two or fewer consecutive weeks.~~
- ~~DB.~~ Operating on its regular basis means the average usual weekly hours worked ~~within~~by an employee in the affected unit for the 12 months immediately prior to submission of the STC plan.
- ~~E.~~ Substantial change means ~~any deviation from the plan that affects an entire unit and is expected to last for three or more consecutive weeks or has already occurred for three or more consecutive weeks.~~
- ~~FC.~~ STC Employer means the employer participating in an approved ~~short-time compensation~~STC plan.

003. Short-time compensation plan

- ~~A.~~ Any employer wishing to participate in the ~~short-time compensation~~ STC program shall complete and submit ~~the short-time compensation an STC plan application through the Department of Labor's website or submit a paper application on in a form provided and manner designated by the Department of Labor commissioner.~~
- ~~B.~~ The commissioner will approve or deny an STC plan within 30 days of receiving a completed STC plan application. If an STC plan application is approved, the commissioner shall notify the STC employer of the effective date of the STC plan.
- ~~BC.~~ ~~A short-time compensation~~An STC plan may only apply to ~~any employees of the STC employer who are in an affected unit that consists of three or more employees.~~
- ~~CD.~~ ~~An STCA short-time compensation~~ plan may only apply to any permanent employees of the STC employer who are permanent employees.

~~Once a STC employer designates an in the affected unit, Workers hired through an employee-leasing company are not eligible for STC benefits.~~

~~E. An STC plan must provide that all members of the affected unit and any other workers performing similar services within the affected unit must will have their usual weekly hours worked reduced by the same percentage, which must be between 10 percent and 60 percent.~~

~~F. An employee of an employer may only be in one affected unit for purposes of the employer's short-time compensation plan STC plan and may not be included in more than one STC plan for the same employer.~~

~~G. If In calculating an employee's usual weekly hours worked, an STC employer shall use the following principles:~~

~~i. If the employee in an affected unit is an employee paid on an hourly basis, his or her percentage of hours reduced will be based on his or her the usual weekly hours worked being forty shall be based on the actual average weekly hours or less worked when the STC employer was operating on its regular basis but shall be no more than 40.~~

~~ii. If an the employee in an affected unit is an employee paid on a salary basis, his or her the employee's percentage of hours reduced must match the percentage his or her the employee's salary is reduced by the STC employer. His or her, but the usual weekly hours worked shall be forty or less no more than 40.~~

~~iii. If an the employee in an affected unit is an employee paid on any basis other than hourly or salary, the STC employer must explain in its plan application how it will establish an hourly rate a percentage of hours reduced for the purposes purpose of the short-time compensation program. His or her STC plan. The usual weekly hours worked shall be forty or less no more than 40.~~

~~I. The effective date of an approved short-time compensation plan shall be the first Sunday following the plan approval date or in the alternative a date mutually agreed upon between the STC employer and the Commissioner of Labor.~~

~~J. A STC employer shall notify all affected employees of any substantial changes to the plan covering their affected unit.~~

~~K. If a STC employer has a change to the plan that impacts an entire unit for more than two consecutive weeks, the STC employer shall provide good cause to the commissioner as to why this~~

004. Changes and Modifications to an Approved STC Plan

~~A. An STC employer making any change, which is not a substantial change, to the plan.~~

- ~~L. No modifications to the plan will be approved retroactively. Eligible employees not originally part of the approved plan will be added to the STC plan the first Sunday following notification to the Department of the eligible employee's name and social security number. Notification shall be provided in a method and manner directed shall promptly notify the commissioner in a form and manner designated by the Commissioner of Labor commissioner.~~
- ~~M. The Department will approve or deny a plan within 30 days of receiving a completed application.~~
- ~~B.N. An STC employer shall use the Department of Labor's website or the paper forms available from the Department to report changes proposing a substantial change to an approved STC plan, request shall seek a plan modification using a form and method designated by the commissioner.~~
- ~~C. A change to an approved STC plan, or revoke shall be presumed to be a substantial change if the change impacts the entire affected unit and lasts or is expected to last more than two consecutive weeks.~~
- ~~D. If an STC employer makes a change to an approved STC plan, that impacts an entire affected unit for more than two consecutive weeks without an approved plan modification, the STC employer shall show good cause why this does not constitute a substantial change. Failure to show good cause may result in plan revocation.~~
- ~~O. AE. An STC employer may have more than one plan affecting different units at the same time, but shall notify all employees in an affected unit of the any substantial change to an STC employer may only be covered by one of the employer's STC plans at a time plan.~~

005. Additional Employees

A STC employer shall not hire any additional part-time or full-time employees ~~employee~~ for the affected unit or contract for the performance of similar services within the affected unit while the ~~short-time compensation~~ STC plan is in effect. An employer may, if necessary, hire new part-time or full-time employees for the affected unit a replacement employee to replace employees any employee who was in the affected unit at the time of the affected unit who were with STC plan application but left the affected unit during the STC plan and are no longer employed in the affected unit. The usual weekly hours of the new worker replacement employee shall be the same as the usual hours of the worker he or she is replacing replaced employee.

005. Continuing Plan Eligibility

If at any time a STC employer fails to meet the eligibility requirements in *Neb. Rev. Stat. §48-675*, the commissioner may notify the STC employer and the STC employer shall be required to respond to the commissioner with good cause for why the STC plan shall not be revoked within seven calendar days of notification from the commissioner.

006. Weekly Benefit Calculation

- A. ~~Approved leave including but not limited to: sick; holiday; personal time off or vacation taken during a week covered by an STC employer's short-time compensation plan shall be treated as actual hours worked for purposes of the short-time compensation weekly benefit amount calculation.~~
- B. ~~If a claimant is covered by multiple approved STC Plans with different employers at the same time, the claimants usual hours worked will be the combined usual hours worked of all of the approved STC employers not exceeding a maximum total of 40 hours. The claimants actual hours worked will be the combined hours worked for all employers.~~
- C. ~~Weekly benefits shall be calculated using only hours worked from all employment, including approved leave hours from an STC employer during the week being claimed.~~

007. ~~Weekly Certification Process~~

A. ~~STC Employer requirements: Requirements~~

- i. ~~For~~Following each benefit week that during which an STC employer has an active short-time compensation-, approved STC plan, the STC employer shall submit a weekly certification of hours worked by for all employees covered by an approved the STC plan through the Department of Labor's website—in the a form and manner directed by the Commissioner commissioner for each employee covered by the employer's approved STC plan on a weekly basis. This weekly certification shall be submitted no later than the Saturday following the benefit week being certified.
- ii. ~~The first employer~~An STC employer's failure to submit a weekly certification shall be due no later than prior to the second Wednesday after the effective date of deadline set by the commissioner may provide the employer's commissioner with good cause to revoke the STC plan. All subsequent weekly employer certifications shall be due by the Wednesday immediately following the benefit week.
- iii. ~~If a STC employer fails to submit the weekly employer certification by the Wednesday immediately following the benefit week, the commissioner will have good cause to terminate the employer's STC plan.~~

B. ~~Claimant requirements~~Participating Employee Requirements

- i. ~~For each week that a claimant is a participant~~ To elect to receive benefits under an STC plan, an employee in an active short-time affected unit must file an application for unemployment compensation plan, the claimant must complete a weekly certification in the a form and manner directed by the Commissioner commissioner.
- ii. ~~An individual electing to participate in an STC plan must provide any information requested by the commissioner to be determine the individual's eligibility for STC benefits or the individual's weekly benefit amount. Failure to provide information as directed may result in denial of STC benefits.~~

- iii. ~~If an individual is not eligible for STC benefits during a weekly short-time compensation benefit amount or a week, the individual may receive regular unemployment compensation benefit amount.~~
- ii. ~~A claimant's weekly certification for a benefit week may be submitted from the first Sunday to Friday immediately following the benefit week through an electronic media claim transaction. A claimant must submit the electronic media claim transaction by the Friday following the most recent week ending date. Failure to file a timely weekly certification shall be the basis for a denial of that week's benefits unless good cause for the late transaction can be shown. Any intervening weeks until the week in which the transaction was completed and received by the Department shall also be denied, regardless of cause.~~
- iii. ~~If a claimant on an approved STC Plan is offered hours and is ineligible for STC unemployment insurance benefits for a week, then the claimant may befor that week if otherwise eligible for Regular. To receive any regular unemployment insurance benefits for that week in accordance with compensation for which the individual may be eligible, the individual shall timely file a weekly certification under the rules and regulations of governing regular unemployment compensation insurance benefits. If a STC employer reduces an employee's hours by less than 10% of the employee's~~

C. Eligibility and Weekly Benefit Amount

- i. ~~An individual is available for all usual weekly hours of work if, for all usual hours of work, then the Participant was either actually available to work or on leave approved by the employee will STC employer.~~
- ii. ~~Leave taken during a benefit week with approval of the STC employer, including but not limited to sick leave, holiday leave, personal time off, and vacation leave, shall be eligible for STC unemployment insurance benefits for treated as actual hours worked during that week for the purpose of calculating STC benefits.~~
- iii. ~~If an individual is covered by more than one approved STC plan, each with a different employer, for a benefit week, the individual's usual hours worked shall be the individual's combined usual hours worked for all STC employers but shall not be more than 40 hours. The individual's actual hours worked for a benefit week will be the combined hours the individual worked for all employers during that week.~~
- iv. ~~If an individual's weekly benefit amount is based primarily on wages earned from an STC employer, a separation from employment with a non-STC employer after the effective date of an approved STC plan will not result in assessment of a time disqualification for the individual~~

008 — Audit Process 007. — STC Plan Review

- A. The Commissioner may audit an STC Plans for plan at any time to review compliance on a regular basis. If during the audit a variance between employer reported information and claimant reported information exists, the Department of Labor.
- B. The Commissioner may redetermine the correct an individual's eligibility for STC benefits or benefit amount for any benefit week if the Commissioner determines that the original determination was based on inaccurate information or an error in calculation. The Commissioner shall make no redetermination after two years from the date of the original determination.
- C. If at any time an STC employer fails to meet the eligibility requirements in Neb. Rev. Stat. §48-675, the Commissioner shall notify the STC employer and the STC employer shall be required to respond, in a form and manner directed by the Commissioner, to show good cause. Failure to show good cause may result in plan revocation.

008.009. Employer Plan Termination

- A. An employer may terminate its STC Plan at any time upon by providing written notice to in a form and manner directed by the Commissioner. The Commissioner shall issue a notice of plan termination of a plan will be indicating the effective the later of the date of the termination notice is received or the termination effective date provided on the notification to the Commissioner. Notice of terminations received after 5:00 p.m. Central Time shall be deemed received the next business day.
- B. When a plan is terminated, revoked, or ended expired according to its terms, the STC employer is required to post the Notice of Plan Termination document a notice of plan termination in a conspicuous place available to all employees in an affected unit covered by the STC Plan for 30 days following the plan termination. Nebraska Department of Labor will provide the Notice of Plan Termination document to the STC employer upon termination of the plan.

010. Other Employment

If a claimant's benefit amount is based primarily upon wages earned from a STC employer, separations from employment from a non STC employer after the effective date of the approved plan will not result in a time disqualification being assessed upon the claimant.

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - SEPTEMBER 22, 2016

TITLE 219 - DEPARTMENT OF LABOR

CHAPTER 19 - SHORT-TIME COMPENSATION PROGRAM

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-607; 48-672 through 48-683.

002. Definitions

- A. Additional employee means any person hired to the affected unit if the hiring would increase the number of employees from the number on the short time compensation (STC) plan application.
- B. Operating on its regular basis means the average usual weekly hours worked by an employee in the affected unit for the 12 months immediately prior to submission of the STC plan.
- C. STC Employer means the employer participating in an approved STC plan.

003. Short-time compensation plan

- A. Any employer wishing to participate in the STC program shall complete and submit an STC plan application in a form and manner designated by the commissioner.
- B. The commissioner will approve or deny an STC plan within 30 days of receiving a completed STC plan application. If an STC plan application is approved, the commissioner shall notify the STC employer of the effective date of the STC plan.
- C. An STC plan may only apply to an affected unit that consists of three or more employees.
- D. An STC plan may only apply to permanent employees of the STC employer in the affected unit. Workers hired through an employee-leasing company are not eligible for STC benefits.
- E. An STC plan must provide that all members of an affected unit and any other workers performing similar services within the affected unit will have their usual weekly hours worked reduced by the same percentage, which must be between 10 percent and 60 percent.
- F. An employee may only be in one affected unit for purposes of an employer's STC plan and may not be included in more than one STC plan for the same employer.

- G. In calculating an employee's usual weekly hours worked, an STC employer shall use the following principles:
- i. If the employee is paid on an hourly basis, the usual weekly hours worked shall be based on the actual average weekly hours worked when the STC employer was operating on its regular basis but shall be no more than 40.
 - ii. If the employee is paid on a salary basis, the employee's percentage of hours reduced must match the percentage the employee's salary is reduced by the STC employer, but the usual weekly hours worked shall be no more than 40.
 - iii. If the employee is paid on any basis other than hourly or salary, the STC employer must explain in its plan application how it will establish a percentage of hours reduced for the purpose of the STC plan. The usual weekly hours worked shall be no more than 40.

004. Changes and Modifications to an Approved STC Plan

- A. An STC employer making any change, which is not a substantial change, to an approved STC plan shall promptly notify the commissioner in a form and manner designated by the commissioner.
- B. An STC employer proposing a substantial change to an approved STC plan shall seek a plan modification using a form and method designated by the commissioner.
- C. A change to an STC plan shall be presumed to be a substantial change if the change impacts the entire affected unit and lasts or is expected to last more than two consecutive weeks.
- D. If an STC employer makes a change to an approved STC plan that impacts an entire affected unit for more than two consecutive weeks without an approved plan modification, the STC employer shall show good cause why this does not constitute a substantial change. Failure to show good cause may result in plan revocation.
- E. An STC employer shall notify all employees in an affected unit of any substantial change to an STC plan.

005. Additional Employees

A STC employer shall not hire any additional employee for the affected unit or contract for the performance of similar services within the affected unit while the STC plan is in effect. An employer may, if necessary, hire a replacement employee to replace any employee who was in the affected unit at the time of the STC plan application but left the affected unit during the STC plan. The usual weekly hours of the replacement employee shall be the same as the usual hours of the replaced employee.

006. Weekly Benefit Process

A. STC Employer Requirements

- i. Following each benefit week during which an STC employer has an active, approved STC plan, the STC employer shall submit a weekly certification for all employees covered by the STC plan in a form and manner directed by the commissioner. This weekly certification shall be submitted no later than the Saturday following the benefit week being certified.
- ii. An STC employer's failure to submit a weekly certification prior to the deadline set by the commissioner may provide the commissioner with good cause to revoke the STC plan.

B. Participating Employee Requirements

- i. To elect to receive benefits under an STC plan, an employee in an affected unit must file an application for unemployment compensation in a form and manner directed by the commissioner.
- ii. An individual electing to participate in an STC plan must provide any information requested by the commissioner to determine the individual's eligibility for STC benefits or the individual's weekly benefit amount. Failure to provide information as directed may result in denial of STC benefits.
- iii. If an individual is not eligible for STC benefits during a benefit week, the individual may receive regular unemployment compensation for that week if otherwise eligible. To receive any regular unemployment compensation for which the individual may be eligible, the individual shall timely file a weekly certification under the rules and regulations governing regular unemployment compensation.

C. Eligibility and Weekly Benefit Amount

- i. An individual is available for all usual hours of work if, for all usual hours of work, the Participant was either actually available to work or on leave approved by the STC employer.
- ii. Leave taken during a benefit week with approval of the STC employer, including but not limited to sick leave, holiday leave, personal time off, and vacation leave, shall be treated as actual hours worked during that week for the purpose of calculating STC benefits.
- iii. If an individual is covered by more than one approved STC plan, each with a different employer, for a benefit week, the individual's usual hours worked shall be the individual's combined usual hours worked for all STC employers but shall not be more than 40 hours. The individual's actual hours worked for a benefit week will be the combined hours the individual worked for all employers during that week.

- iv. If an individual's weekly benefit amount is based primarily on wages earned from an STC employer, a separation from employment with a non-STC employer after the effective date of an approved STC plan will not result in assessment of a time disqualification for the individual.

007. STC Plan Review

- A. The commissioner may audit an STC plan at any time to review compliance.
- B. The commissioner may redetermine an individual's eligibility for STC benefits or benefit amount for any benefit week if the commissioner determines that the original determination was based on inaccurate information or an error in calculation. The commissioner shall make no redetermination after two years from the date of the original determination.
- C. If at any time an STC employer fails to meet the eligibility requirements in *Neb. Rev. Stat. §48-675*, the commissioner shall notify the STC employer and the STC employer shall be required to respond, in a form and manner directed by the commissioner, to show good cause. Failure to show good cause may result in plan revocation.

008. Employer Plan Termination

- A. An employer may terminate its STC Plan at any time by providing written notice in a form and manner directed by the commissioner. The commissioner shall issue a notice of plan termination indicating the effective date of the termination.
- B. When a plan is terminated, revoked, or expired according to its terms, the STC employer is required to post a notice of plan termination in a conspicuous place available to all employees in an affected unit covered by the STC Plan for 30 days following the plan termination.

FISCAL IMPACT STATEMENT

Agency: Department of Labor	
Title: 219	Prepared by: Elizabeth Cano, Legal Counsel
Chapters: 19	Date prepared: June , 2022
Subject: Short-Time Compensation Program	Telephone: 402-471-9912

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Increased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indeterminable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Provide an Estimated Cost & Description of Impact:

State Agency: n/a

Political Subdivision: n/a

Regulated Public: n/a

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - NEW CHAPTER

TITLE 219 - DEPARTMENT OF LABOR

CHAPTER 21 - INVESTIGATIONS UNDER NEB. REV. STAT. §48-663.01
TO §48-665.01

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §48-607 and §48-663.01 to §48-665.01.

002. When the commissioner sends a notice providing a claimant an opportunity to contest proposed findings that the commissioner has made as part of an investigation conducted pursuant to *Neb. Rev. Stat.* §48-663.01 to §48-665.01, the claimant shall have 10 days from the mail date listed on the notice to respond in a form and manner directed by the commissioner.

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - NEW CHAPTER

TITLE 219 - DEPARTMENT OF LABOR

CHAPTER 21 - INVESTIGATIONS UNDER *NEB. REV. STAT.* §48-663.01 TO §48-665.01

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §48-607 and §48-663.01 to §48-665.01.

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FISCAL IMPACT STATEMENT

Agency: Department of Labor	
Title: 219	Prepared by: Elizabeth Cano, Legal Counsel
Chapters: 21	Date prepared: June , 2022
Subject: Procedure for investigations under Neb. Rev. Stat. §48-663.01 to §48-665.01	Telephone: (402) 471-9912

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Increased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indeterminable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Provide an Estimated Cost & Description of Impact:

State Agency: n/a

Political Subdivision: n/a

Regulated Public: n/a

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - MAY 14, 2014
TITLE 224 - DEPARTMENT OF LABOR
CHAPTER 1 - APPEALS PROCEDURE

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-607, 48-634 and 48-635. It governs the procedures to be followed regarding appeals from disputed unemployment benefit claims as set out in the Nebraska Employment Security Law (*Neb. Rev. Stat.* §48-601, et seq.). Because the overwhelming number of these hearings involve unrepresented, unemployed parties who cannot afford legal counsel, these rules do not incorporate the more formalized rules of procedure for administrative hearings adopted by the Attorney General in accordance with *Neb. Rev. Stat.* §84-909 .01.

002. Hearings shall be conducted before an appeal tribunal consisting of a single hearing officer. The hearing officers of the Nebraska Department of Labor and their staff shall be collectively referred to as the Nebraska Appeal Tribunal.

003.

- A. ~~A party entitled to a Notice of Determination~~ Anyone who receives a determination issued by the Department may file an ~~Notice of Appeal~~ appeal with the Department, or the employment security office of another state in the case of combined wage or interstate claims, by (1) completing a request in a ~~format prescribed and approved form and manner designated by the Commissioner~~ commissioner or (2) submitting a letter ~~clearly~~ expressing intent to appeal. The appealing party shall identify the particular determination to be appealed and shall state the reason(s) for the appeal. The ~~Notice of Appeal~~ appeal filed by the claimant or the employer must specifically state reasons for the appeal of a finding an overpayment of unemployment benefits to a claimant or the charging of benefits to an employer's experience account. Failure to state a basis for appeal of the overpayment or charging determination shall act as a waiver of the right to appeal that issue. ~~The Commissioner may require third party employer representatives representing fifty or more employers to submit appeals electronically in a format prescribed by the Commissioner.~~ The ~~Notice of Appeal~~ appeal must be received by electronic filing or delivered to the address listed on the ~~Notice of Determination~~.
- B. Except when filed electronically, the ~~Notice of Appeal~~ appeal must be received by the close of business within twenty calendar days of the date set forth in the "Date Mailed" portion of the Notice of Determination to be considered received and timely. When filed electronically, an appeal received by the ~~Department~~ Appeal Tribunal before twelve o'clock midnight, as determined by the ~~Department's of Labor facsimile machine or the computer server receiving the appeal,~~ shall be deemed timely filed. The day of mailing of the Determination shall not be included in the calendar days. ~~Appeals faxed or postmarked within the twenty day period but not received within the twenty day period shall not be considered as timely filed.~~ Timelines of an appeal will be determined by the date the appeal is received by the Appeal Tribunal.

- C. The Appeal Tribunal may hear an appeal received outside the twenty day appeal period only for good cause shown.
004. Any appellant who wishes to withdraw an appeal may do so by a written statement submitted to the Appeal Tribunal or on the record during a hearing before the Appeal Tribunal.
005. All interested parties shall be notified by the Appeal Tribunal that an appeal has been filed. ~~The Commissioner may allow any party to elect to receive and transmit all notices, documents and the decision in an appeal in an electronic format.~~
006. A hearing officer shall not participate in an appeal in which he or she has a conflict of interest.
007. Ex parte communications shall be strictly limited to procedural matters not involving the factual basis of any claim. Transfer of agency documents to the Appeal Tribunal and the submission of proposed exhibits to be offered into evidence at a hearing conducted by telephone conference call shall not be considered ex parte communication.
- 008.
- A. A party may request that the Appeal Tribunal issue a subpoena to compel the attendance of a witness or the production of documents. Subpoenas should be ~~requested and~~ submitted at least five days prior to the date the hearing is scheduled. A request to compel the attendance of a witness shall identify the appeal docket number, the witness to be subpoenaed with an address where the witness may be served, and why the presence of the witness is necessary for the presentation of the case.
- B. A subpoena request for the production of documents shall identify the appeal docket number, the documents to be subpoenaed, the person to whom the subpoena should be sent, and why the production of the documents is necessary for the presentation of the case.
- C. The Appeal Tribunal also may issue subpoenas on its own motion. The Appeal Tribunal, in its discretion, may limit the number of witnesses and documents subpoenaed in order to eliminate incompetent, irrelevant, immaterial, or repetitious testimony.
- D. A copy of the subpoena issued shall be provided to the requesting party.
009. A witness subpoenaed to appear at a hearing shall be paid witness fees, upon request, ~~from the Employment Security Administration Fund.~~ The witness shall receive eight dollars for each day. A request for witness fees must be made on a form furnished to the witness at the time the subpoena was received. If the witness is required to travel ~~to a specific site~~ for an in-person hearing, the witness shall be compensated at the rate of \$0.485 per mile for each mile actually and necessarily traveled.
010. ~~All parties before the Appeal Tribunal shall have access to the appeal file.~~
- A. When an appeal is docketed, the agency shall transmit to the Appeal Tribunal a Hearing File that contains all records of the agency relevant to the issue appealed.

including (1) a copy of the determination appealed and any redetermination issued after the filing of the appeal; (2) claim notes and fact-finding documents related to the determination appealed (3) documents considered by the agency when making the determination appealed, including questionnaires, written statements, or other documents submitted by the claimant or the employer to agency; (4) any other determination issued by the agency that is relevant to the issue appealed; and (5) the appeal statement.

B. The Appeal Tribunal shall make the Hearing File available to any party at least two business days before the hearing. The Notice of Hearing shall provide the parties with instructions on how to access the Hearing File.

011. If the Appeal Tribunal deems it is appropriate and if its use will not unduly prolong the dispute, discovery may be used.

012. Hearings shall be scheduled and heard as quickly as possible ~~following a Notice of Appeal filed.~~ Parties to the appeal shall be notified by mail of the date and time of the hearing. A Notice of Hearing shall be provided at least seven days prior to the date of the hearing. ~~The Notice of Hearing shall be sent to the last known address of said party, as indicated by the records of the Department.~~ The Appeal Tribunal will conduct all hearings by telephone or virtual conference call. The Appeal Tribunal may, at its sole discretion, provide that hearings be conducted in person.

013. A Request for Continuance shall be made to the Appeal Tribunal. Continuances may be allowed ~~upon a showing of~~ for good cause and at the sole discretion of the supervising hearing officer or the hearing officer assigned to the case.

014. The appealing party shall present its evidence first as to why it believes the determination appealed from was incorrect and provide any legal authority for the relief requested by the appealing party. If an appealing party fails to appear for the scheduled hearing pursuant to the instructions contained within the Notice of Hearing, the Appeal Tribunal may dismiss the appeal ~~for want of prosecution.~~ If any of the responding parties fails to appear, the Appeal Tribunal will proceed with the hearing and render a decision based on evidence received from the appealing party. The granting of a Request to Reopen or Request for Reconsideration shall be within the sound discretion of the supervising hearing officer or the hearing officer assigned to the case.

015.

A. In accordance with *Neb. Rev. Stat. §48-635*, a hearing before the Appeal Tribunal shall be conducted in an informal manner and the common-law or statutory rules of evidence and other technical rules of procedure shall not apply.

B. All testimony shall be taken under oath or affirmation. Evidence may be excluded should the hearing officer find it to be incompetent, irrelevant, immaterial, or unduly repetitious.

C. At the beginning of any hearing at which the appealing party appears, the hearing officer shall mark the Hearing File as an exhibit and shall admit it into evidence. The documents in the Hearing File shall be self-authenticating as records of the

agency. Any party may use any portion of the Hearing File when presenting its case, and the hearing officer may question the parties about any documents in the Hearing File. The hearing officer shall consider the documents in the Hearing File when making findings of fact and conclusions of law and shall determine what weight to give to the documents.

- D. Each party shall have the right to present evidence, both oral and documentary. Each party shall have the right to cross-examine witnesses and to present rebuttal evidence.
 - E. The hearing officer shall have the right in his or her discretion to limit the number of witnesses whose testimony may be incompetent, irrelevant, immaterial or unduly repetitious and may also limit the cross-examination of witnesses so as not to prolong the hearing unnecessarily and unduly burden the record.
 - F. A party wishing to offer a document into evidence should provide a copy to all other parties prior to the time set for the hearing and sent to the Appeal Tribunal at least 24 hours prior to the time of the hearing. Documents not provided to all parties prior to the hearing shall be received into evidence only for good cause shown. The hearing officer shall have the right in his or her discretion to exclude the number of documents that may be ineffectual, irrelevant, immaterial, or unduly repetitive. Documents marked and offered into evidence shall become part of the record of the hearing, regardless of whether they are actually received into evidence. Upon request, copies may be substituted if original documents are presented.
 - G. Objections to evidence shall be made to the Appeal Tribunal at the time the evidence is offered.
 - H. A hearing officer shall take official notice of the determination appealed, the Nebraska Employment Security Law, any relevant federal statute, any relevant unemployment insurance program letter issued by the United States Department of Labor and any relevant regulation of the Department, pursuant to *Neb. Rev. Stat. §84-914*. A hearing officer may take official notice of other facts as authorized in *Neb. Rev. Stat. §84-914*.
 - I. The hearing officer shall function as an impartial fact finder and must attempt to obtain the reasonably available, competent evidence necessary to resolve the issues of the case, but shall not act as an advocate for any party.
 - J. All testimony before the Appeal Tribunal shall be recorded. Parties to a proceeding may obtain a duplicate recording or transcript upon written request and by paying the actual cost of duplication, transcription, and mailing to the Appeal Tribunal.
016. It shall be the duty of the Appeal Tribunal to reach an independent conclusion regarding the facts of any case. The Appeal Tribunal shall follow Nebraska Statutes, federal statutes, the decisions of Courts of superior jurisdictions, previous Appeal Tribunal decisions, unless specifically overruled, as well as applicable Department rules and regulations and Unemployment Insurance Program Letters published by the United States Department of Labor regarding the eligibility, payment and recovery of overpayments of unemployment

benefits. The Appeal Tribunal shall not have jurisdiction to determine the validity or constitutionality of any Department regulation or Nebraska Statute.

017. A. A decision shall be issued within thirty days following the completion of the hearing of an appeal. The decision shall contain the findings of fact and the opinion of the Appeal Tribunal. The decision shall affirm, reverse, or modify the determination appealed. For good cause shown, the Appeal Tribunal may remand the case to the ~~Claims Center~~ Department. The decision shall be promptly sent to each of the parties via US Mail or electronic means.
- B. If a decision has not been issued and mailed to the parties within thirty days following the completion of a hearing, any party may request the Commissioner to investigate the reasons for the delay.
- C. The ~~Commissioner~~ commissioner may appoint a different hearing officer to complete the appeal in the event that a decision is not issued within forty-five days following the completion of the hearing on the appeal.
018. The ~~Commissioner~~ commissioner shall be notified by the Appeal Tribunal in writing of all administrative appeals that have not been assigned a hearing date within 30 days of their receipt.
019. A. Copies of all Appeal Tribunal decisions shall be kept on file for a period of four years from the date the decision becomes final and available on request at the Tribunal's discretion. With the exception of the last names of claimants, all other identifying references to interested parties, to the extent possible, may be expunged from such copies.
- B. Decisions published in a case digest may be made available to persons other than the parties to the appeal, if the first name of the claimant and his or her social security number are expunged or redacted from the copy made available to the public. With the exception of the last names of claimants, all other identifying references to interested parties, to the extent possible, may be expunged or redacted at the Appeal Tribunal's discretion.
- C. Appeals records and decisions rendered under the Employment Security Law and designated as precedential decisions by the ~~Commissioner of Labor~~ commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in a case digest or precedent manual, or otherwise made available to persons other than the parties to the appeal, if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law. The supervising hearing officer or the ~~Department's of Labor's~~ General Counsel may recommend a decision to the ~~Commissioner~~ commissioner for designation as a precedent decision. If a case is recommended for designation as a precedent decision, the ~~Commissioner~~ commissioner shall seek comment on such designation from both the supervising hearing officer and the ~~Department's of Labor's~~ General Counsel. The ~~Commissioner's~~ commissioner's decision as to whether or not to designate a decision as a precedent decision shall be final and not subject to further review or appeal.

020. Appeals may be taken from decisions made pursuant to this chapter in accordance with applicable state laws.
021. Parties may request that an order or decision of the Appeal Tribunal be reconsidered. Claimants and employers have ten days from the date a decision or order was mailed to the parties to file a request for reconsideration. The granting of a request for reconsideration shall be within the sound discretion of the supervising hearing officer or the hearing officer assigned to the case. The Appeal Tribunal may consider a request for reconsideration from an employer or the claimant received outside the ten day period only for good cause shown.
022. A Bill of Exceptions will be prepared for inclusion in the agency record filed with the district court in any case upon certification from any party to the appeal hearing that the case is being or has been appealed to district court. If a party requests a Bill of Exceptions but does not file an appeal in district court, the party requesting the preparation of the Bill of Exceptions shall be responsible for the cost of preparing the Bill of Exceptions.

NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE - MAY 14, 2014
TITLE 224 - DEPARTMENT OF LABOR
CHAPTER - APPEALS PROCEDURE

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-607, 48-634 and 48-635. It governs the procedures to be followed regarding appeals from disputed unemployment benefit claims as set out in the Nebraska Employment Security Law (*Neb. Rev. Stat.* §48-601, et seq.). Because the overwhelming number of these hearings involve unrepresented, unemployed parties who cannot afford legal counsel, these rules do not incorporate the more formalized rules of procedure for administrative hearings adopted by the Attorney General in accordance with *Neb. Rev. Stat.* §84-909 .01.
002. Hearings shall be conducted before an appeal tribunal consisting of a single hearing officer. The hearing officers of the Nebraska Department of Labor (“the Department”) and their staff shall be collectively referred to as the Nebraska Appeal Tribunal.
- 003.
- A. Anyone who receives a determination issued by the Department may file an appeal with the Department, or the employment security office of another state in the case of combined wage or interstate claims, by (1) completing a request in a form and manner designated by the commissioner or (2) submitting a letter expressing intent to appeal. The appealing party shall identify the particular determination to be appealed and shall state the reason(s) for the appeal. The appeal filed by the claimant or the employer must specifically state reasons for the appeal of a finding an overpayment of unemployment benefits to a claimant or the charging of benefits to an employer’s experience account. Failure to state a basis for appeal of the overpayment or charging determination shall act as a waiver of the right to appeal that issue. The appeal must be received by electronic filing or delivered to the address listed on the Determination.
 - B. Except when filed electronically, the appeal must be received by the close of business within twenty calendar days of the date set forth in the "Date Mailed" portion of the determination to be considered timely. When filed electronically, an appeal received by the Appeal Tribunal before twelve o'clock midnight, as determined by the Department’s computer server receiving the appeal, shall be deemed timely filed. The day of mailing of the Determination shall not be included in the calendar days. Timeliness of an appeal will be determined by the date the appeal is received by the Appeal Tribunal.
 - C. The Appeal Tribunal may hear an appeal received outside the twenty day appeal period only for good cause shown.
004. Any appellant who wishes to withdraw an appeal may do so by a written statement submitted to the Appeal Tribunal or on the record during a hearing before the Appeal Tribunal.

005. All interested parties shall be notified by the Appeal Tribunal that an appeal has been filed.
006. A hearing officer shall not participate in an appeal in which he or she has a conflict of interest.
007. Ex parte communications shall be strictly limited to procedural matters not involving the factual basis of any claim. Transfer of agency documents to the Appeal Tribunal and the submission of proposed exhibits to be offered into evidence at a hearing conducted by telephone conference call shall not be considered ex parte communication.
- 008.
- A. A party may request that the Appeal Tribunal issue a subpoena to compel the attendance of a witness or the production of documents. Subpoenas should be submitted at least five days prior to the date the hearing is scheduled. A request to compel the attendance of a witness shall identify the appeal docket number, the witness to be subpoenaed with an address where the witness may be served, and why the presence of the witness is necessary for the presentation of the case.
 - B. A subpoena request for the production of documents shall identify the appeal docket number, the documents to be subpoenaed, the person to whom the subpoena should be sent, and why the production of the documents is necessary for the presentation of the case.
 - C. The Appeal Tribunal also may issue subpoenas on its own motion. The Appeal Tribunal, in its discretion, may limit the number of witnesses and documents subpoenaed in order to eliminate incompetent, irrelevant, immaterial, or repetitious testimony.
 - D. A copy of the subpoena issued shall be provided to the requesting party.
009. A witness subpoenaed to appear at a hearing shall be paid witness fees, upon request. The witness shall receive eight dollars for each day. A request for witness fees must be made on a form furnished to the witness at the time the subpoena was received. If the witness is required to travel for an in-person hearing, the witness shall be compensated at the rate of \$0.485 per mile for each mile actually and necessarily traveled.
- 010.
- A. When an appeal is docketed, the agency shall transmit to the Appeal Tribunal a Hearing File that contains records of the agency relevant to the issue appealed, including (1) a copy of the determination appealed and any redetermination issued after the filing of the appeal; (2) claim notes and fact-finding documents related to the determination appealed (3) documents considered by the agency when making the determination appealed, including questionnaires, written statements, or other documents submitted by the claimant or the employer to agency; (4) any other determination issued by the agency that is relevant to the issue appealed; and (5) the appeal statement.
 - B. The Appeal Tribunal shall make the Hearing File available to any party at least two business days before the hearing. The Notice of Hearing shall provide the parties with instructions on how to access the Hearing File.

011. If the Appeal Tribunal deems it is appropriate and if its use will not unduly prolong the dispute, discovery may be used.
012. Hearings shall be scheduled and heard as quickly as possible. Parties to the appeal shall be notified of the date and time of the hearing. A Notice of Hearing shall be provided at least seven days prior to the date of the hearing. The Appeal Tribunal will conduct hearings by telephone or virtual conference. The Appeal Tribunal may, at its sole discretion, provide that hearings be conducted in person.
013. A Request for Continuance shall be made to the Appeal Tribunal. Continuances may be allowed for good cause and at the sole discretion of the supervising hearing officer or the hearing officer assigned to the case.
014. The appealing party shall present its evidence first as to why it believes the determination appealed from was incorrect and provide any legal authority for the relief requested by the appealing party. If an appealing party fails to appear for the scheduled hearing pursuant to the instructions contained within the Notice of Hearing, the Appeal Tribunal may dismiss the appeal. If any of the responding parties fails to appear, the Appeal Tribunal will proceed with the hearing and render a decision based on evidence received from the appealing party. The granting of a Request to Reopen or Request for Reconsideration shall be within the sound discretion of the supervising hearing officer or the hearing officer assigned to the case.
015.
 - A. In accordance with *Neb. Rev. Stat. §48-635*, a hearing before the Appeal Tribunal shall be conducted in an informal manner and the common-law or statutory rules of evidence and other technical rules of procedure shall not apply.
 - B. All testimony shall be taken under oath or affirmation. Evidence may be excluded should the hearing officer find it to be incompetent, irrelevant, immaterial, or unduly repetitious.
 - C. At the beginning of any hearing at which the appealing party appears, the hearing officer shall mark the Hearing File as an exhibit and shall admit it into evidence. The documents in the Hearing File shall be self-authenticating as records of the agency. Any party may use any portion of the Hearing File when presenting its case, and the hearing officer may question the parties about any documents in the Hearing File. The hearing officer shall consider the documents in the Hearing File when making findings of fact and conclusions of law and shall determine what weight to give to the documents.
 - D. Each party shall have the right to present evidence, both oral and documentary. Each party shall have the right to cross-examine witnesses and to present rebuttal evidence.
 - E. The hearing officer shall have the right in his or her discretion to limit the number of witnesses whose testimony may be incompetent, irrelevant, immaterial or unduly repetitious and may also limit the cross-examination of witnesses so as not to prolong the hearing unnecessarily and unduly burden the record.

- F. A party wishing to offer a document into evidence should provide a copy to all other parties prior to the time set for the hearing and sent to the Appeal Tribunal at least 24 hours prior to the time of the hearing. Documents not provided to all parties prior to the hearing shall be received into evidence only for good cause shown. The hearing officer shall have the right in his or her discretion to exclude the number of documents that may be ineffectual, irrelevant, immaterial, or unduly repetitive. Documents marked and offered into evidence shall become part of the record of the hearing, regardless of whether they are actually received into evidence. Upon request, copies may be substituted if original documents are presented.
 - G. Objections to evidence shall be made to the Appeal Tribunal at the time the evidence is offered.
 - H. A hearing officer shall take official notice of the determination appealed, the Nebraska Employment Security Law, any relevant federal statute, any relevant unemployment insurance program letter issued by the United States Department of Labor and any relevant regulation of the Department, pursuant to *Neb. Rev. Stat. §84-914*. A hearing officer may take official notice of other facts as authorized in *Neb. Rev. Stat. §84-914*.
 - I. The hearing officer shall function as an impartial fact finder and must attempt to obtain the reasonably available, competent evidence necessary to resolve the issues of the case, but shall not act as an advocate for any party.
 - J. All testimony before the Appeal Tribunal shall be recorded. Parties to a proceeding may obtain a duplicate recording or transcript upon written request and by paying the actual cost of duplication, transcription, and mailing to the Appeal Tribunal.
016. It shall be the duty of the Appeal Tribunal to reach an independent conclusion regarding the facts of any case. The Appeal Tribunal shall follow Nebraska Statutes, federal statutes, the decisions of Courts of superior jurisdictions, previous Appeal Tribunal decisions, unless specifically overruled, as well as applicable Department rules and regulations and Unemployment Insurance Program Letters published by the United States Department of Labor regarding the eligibility, payment and recovery of overpayments of unemployment benefits. The Appeal Tribunal shall not have jurisdiction to determine the validity or constitutionality of any Department regulation or Nebraska Statute.
- 017.
- A. A decision shall be issued within thirty days following the completion of the hearing of an appeal. The decision shall contain the findings of fact and the opinion of the Appeal Tribunal. The decision shall affirm, reverse, or modify the determination appealed. For good cause shown, the Appeal Tribunal may remand the case to the Department. The decision shall be promptly sent to each of the parties via US Mail or electronic means.
 - B. If a decision has not been issued and mailed to the parties within thirty days following the completion of a hearing, any party may request the Commissioner to investigate the reasons for the delay.

- C. The commissioner may appoint a different hearing officer to complete the appeal in the event that a decision is not issued within forty-five days following the completion of the hearing on the appeal.
018. The commissioner shall be notified of all administrative appeals that have not been assigned a hearing date within 30 days of their receipt.
- 019.
- A. Copies of all Appeal Tribunal decisions shall be kept on file for a period of four years from the date the decision becomes final and available on request at the Tribunal's discretion. With the exception of the last names of claimants, all other identifying references to interested parties, to the extent possible, may be expunged from such copies.
 - B. Decisions published in a case digest may be made available to persons other than the parties to the appeal, if the first name of the claimant and his or her social security number are expunged or redacted from the copy made available to the public. With the exception of the last names of claimants, all other identifying references to interested parties, to the extent possible, may be expunged or redacted at the Appeal Tribunal's discretion.
 - C. Appeals records and decisions rendered under the Employment Security Law and designated as precedential decisions by the commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in a case digest or precedent manual, or otherwise made available to persons other than the parties to the appeal, if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law. The supervising hearing officer or the Department's General Counsel may recommend a decision to the commissioner for designation as a precedent decision. If a case is recommended for designation as a precedent decision, the commissioner shall seek comment on such designation from both the supervising hearing officer and the Department's General Counsel. The commissioner's decision as to whether or not to designate a decision as a precedent decision shall be final and not subject to further review or appeal.
020. Appeals may be taken from decisions made pursuant to this chapter in accordance with applicable state laws.
021. Parties may request that an order or decision of the Appeal Tribunal be reconsidered. Claimants and employers have ten days from the date a decision or order was mailed to the parties to file a request for reconsideration. The granting of a request for reconsideration shall be within the sound discretion of the supervising hearing officer or the hearing officer assigned to the case. The Appeal Tribunal may consider a request for reconsideration from an employer or the claimant received outside the ten day period only for good cause shown.
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does not file an appeal in district court, the party requesting the preparation of the Bill of Exceptions shall be responsible for the cost of preparing the Bill of Exceptions.

PROPOSED

FISCAL IMPACT STATEMENT

Agency: Department of Labor	
Title: 224	Prepared by: Elizabeth Cano, Legal Counsel
Chapters: 1	Date prepared: June , 2022
Subject: Appeals Procedure	Telephone: (402) 471-9912

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Increased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indeterminable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Provide an Estimated Cost & Description of Impact:

State Agency: n/a

Political Subdivision: n/a

Regulated Public: n/a