

CHAPTER 120

LABOR AND INDUSTRY

HOUSE BILL 02-1331

BY REPRESENTATIVE(S) Fritz, Fairbank, Clapp, Coleman, Harvey, Hodge, Jahn, Lee, Madden, Sanchez, and Vigil;
also SENATOR(S) Tupa.

AN ACT**CONCERNING THE USE OF ELECTRONIC TECHNOLOGY WHEN ADMINISTERING THE "COLORADO EMPLOYMENT SECURITY ACT".**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-74-102 (1), Colorado Revised Statutes, is amended to read:

8-74-102. Deputy's decision. (1) Upon receipt of a claim, the division shall notify any other interested parties of the claim BY MAIL OR ELECTRONIC MEANS IN ACCORDANCE WITH SUCH RULES AS THE DIRECTOR OF THE DIVISION MAY PROMULGATE. Such interested parties shall be afforded twelve calendar days from the date of ~~mailing~~ of SUCH notice of the claim ~~in which~~ to present any ~~additional~~ information pertinent to the claim BY MAIL, TELEPHONE, OR ELECTRONIC MEANS IN ACCORDANCE WITH SUCH RULES AS THE DIRECTOR OF THE DIVISION MAY PROMULGATE. Such information ~~must~~ SHALL be postmarked, IF MAILED, or received by the division, IF SUBMITTED IN PERSON OR BY ELECTRONIC MEANS, within twelve calendar days from said date. ~~of mailing.~~ If the twelfth calendar day falls on a weekend or a state holiday, such date shall be moved to the first working day immediately following such weekend or holiday. The interested party may present information out of time only if good cause is shown. A deputy to be designated by the director of the division shall promptly examine all materials submitted. Whenever information submitted is not clearly adequate to substantiate a decision, the deputy shall promptly seek the necessary information. If it is necessary to obtain information by mail from any source, the information shall be received by the division no later than seven calendar days from the date of the request for information. On the basis of ~~his~~ THE DEPUTY'S review, the deputy shall determine the validity of the claim and, if valid, when payment shall commence, the amount payable, and the duration of payment. The deputy shall issue a decision in all cases, even if the claimant has insufficient qualifying wages, unless the interested employer did not receive notice

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

of the claim, except when the separation from employment is due to a lack of work and no alleged disqualifying circumstances are indicated. ~~His~~ THE DEPUTY'S decision shall set forth findings of fact, conclusions of law, and an order. The division shall promptly provide all interested parties with copies of the deputy's decision.

SECTION 2. 8-74-103 (1), Colorado Revised Statutes, is amended to read:

8-74-103. Hearing officer review. (1) Any interested party who is dissatisfied with a deputy's decision may appeal that decision and obtain a hearing covering any issue relevant to the disputed claim. The issue of a claimant's availability will be relevant to the extent set forth in section 8-73-107 (1) (c) (I) (A). The initial appeal shall be to a hearing officer designated by the director of the division and must be postmarked, IF MAILED, or received by the division, IF SUBMITTED IN PERSON OR BY ELECTRONIC MEANS, within fifteen calendar days from the date of notification of the decision of the deputy IN ACCORDANCE WITH SUCH RULES AS THE DIRECTOR OF THE DIVISION MAY PROMULGATE. "Deputy", as used in this article, means a person who adjudicates claims for the division when Colorado is the paying state. Wages paid in Colorado and transferred to another state in which the claimant has filed shall not be subject to adjudication by a deputy of the division or to an appeal directed to this state.

SECTION 3. 8-74-104 (1), Colorado Revised Statutes, is amended to read:

8-74-104. Industrial claim appeals office review. (1) Any interested party who is dissatisfied by a hearing officer's decision may appeal that decision and obtain administrative review by the industrial claim appeals office. Any such appeal must be postmarked, IF MAILED, or received by the industrial claim appeals office, IF SUBMITTED IN PERSON OR BY ELECTRONIC MEANS, within fifteen calendar days from the date of ~~mailing~~ NOTIFICATION of the decision of the hearing officer. The director of the division ~~shall~~ MAY prescribe ~~regulations~~ RULES for the conduct of such appeals, including apportionment of transcript costs (not to exceed the actual costs of such materials), FILING METHODS, briefing schedules, and similar matters.

SECTION 4. 8-74-106 (1) (a), Colorado Revised Statutes, is amended to read:

8-74-106. Time limits and procedures for appeal within the division. (1) The following procedures and limitations shall apply to all appeals taken pursuant to this article:

(a) Any party may petition for review of a deputy's decision by filing a petition therefor with the division within fifteen calendar days after the date of notification of such decision. Notification of the decision shall be by personal delivery of the decision to an interested party or by mailing a copy of the decision to the last-known address shown in the division ~~files~~ RECORDS of an interested party and to ~~his~~ THE INTERESTED PARTY'S attorney or representative of record, if any, OR BY ELECTRONIC MEANS. The date of notification shall be the date of personal delivery, THE DATE OF TRANSMISSION AS RECORDED BY THE DIVISION, IF NOTIFICATION IS MADE BY ELECTRONIC MEANS, or the date of mailing of a decision.

SECTION 5. 8-76-103 (4), Colorado Revised Statutes, is amended to read:

8-76-103. Future rates based on benefit experience. (4) An employer shall have sixty calendar days from the mailing date OR THE TRANSMISSION DATE AS RECORDED BY THE DIVISION of a quarterly statement of benefits charged to ~~his~~ THE EMPLOYER'S account in which to file a written protest or application requesting a review and determination of benefit charges. Such application shall specify in detail the grounds upon which such employer relies AND MAY BE FILED IN PERSON, BY MAIL, OR BY ELECTRONIC MEANS IN ACCORDANCE WITH SUCH RULES AS THE DIRECTOR OF THE DIVISION MAY PROMULGATE. The division shall investigate the matters specified and give such employer notice ~~by mail~~ of its redetermination BY MAIL OR BY ELECTRONIC MEANS. If the employer fails to act within the prescribed time, benefits charged to such account shall be deemed correct and final. Appeal from the redetermination decision may be made pursuant to section 8-76-113 (2).

SECTION 6. 8-76-104 (5) (g), Colorado Revised Statutes, is amended to read:

8-76-104. Successor employer. (5) (g) The transfer of experience with respect to a segregable unit shall be of no force and effect unless an application for such transfer, signed by both the predecessor employer and the successor EMPLOYER, is filed with the division IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE. Such application shall be filed within sixty days after the notice of employer liability from the division is mailed OR TRANSMITTED BY ELECTRONIC MEANS to the successor employer. Such notice shall contain information pertaining to segregable unit transfers.

SECTION 7. 8-76-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-76-106. Termination of employer liability. (4) FOR THE PURPOSES OF THIS SECTION, WRITTEN APPLICATIONS SHALL BE FILED IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE, INCLUDING IN PERSON, BY MAIL, BY TELEPHONE, OR BY ELECTRONIC MEANS.

SECTION 8. 8-76-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-76-107. Election to become liable. (3) FOR THE PURPOSES OF THIS SECTION, WRITTEN APPLICATIONS SHALL BE FILED IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE, INCLUDING IN PERSON, BY MAIL, BY TELEPHONE, OR BY ELECTRONIC MEANS.

SECTION 9. 8-76-108 (1) (d), Colorado Revised Statutes, is amended to read:

8-76-108. Coverage by political subdivisions. (1) (d) An election by a contributing political subdivision to become a reimbursing employer or an election by a reimbursing political subdivision to become a contributing employer may be made by filing with the division written notice, IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE, not later than March 1 of the calendar year in which the election is to be effective. Such election becomes effective as of the first day of the calendar year with respect to services performed after that date. Notwithstanding the effective date of any election, the political subdivision remains liable for all benefits chargeable against its account ~~which~~ THAT it has not

paid.

SECTION 10. 8-76-110, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-76-110. Financing benefits paid to employees of nonprofit organizations.

(8) FOR THE PURPOSES OF THIS SECTION, APPLICATIONS, FILINGS, AND NOTICES OF ELECTION SHALL BE FILED IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE, INCLUDING IN PERSON, BY MAIL, BY TELEPHONE, OR BY ELECTRONIC MEANS.

SECTION 11. 8-76-113 (1) and (2), Colorado Revised Statutes, are amended to read:

8-76-113. Protest - appeal - filed by an employer. (1) Any employer who wishes to appeal a determination of liability for taxes, a determination of coverage under the provisions of articles 70 to 82 of this title, or a seasonality determination pursuant to section 8-73-106 may file a written notice of appeal with the division IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE, INCLUDING IN PERSON, BY MAIL, OR BY ELECTRONIC MEANS. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless the notice of appeal has been postmarked or received by the division within fifteen calendar days from the date the notice of such determination is mailed OR TRANSMITTED by the division to the employer IN ACCORDANCE WITH SUCH RULES AS THE DIRECTOR OF THE DIVISION MAY PROMULGATE.

(2) Any employer who wishes to protest an assessment of taxes, a notice of rate of tax, a recomputation of tax rate, or any notice of correction of any matter set forth in this subsection (2) shall file a request for redetermination with the division, in accordance with ~~regulations~~ RULES promulgated by the director of the division. The division shall thereafter promptly notify the employer of its redetermination decision. Any employer who wishes to appeal from a redetermination decision may file a written notice of appeal with the division. Except as otherwise provided by this section, proceedings on appeal shall be governed by the provisions of article 74 of this title. No appeal shall be heard unless notice of appeal has been postmarked or received by the division within fifteen calendar days from the date the notice of such redetermination is mailed OR TRANSMITTED by the division to the employer IN ACCORDANCE WITH SUCH RULES AS THE DIRECTOR OF THE DIVISION MAY PROMULGATE.

SECTION 12. 8-79-104 (2), Colorado Revised Statutes, is amended to read:

8-79-104. Failure to file true report - penalty. (2) Any assessment so made and certified by the division shall be prima facie good and sufficient for all legal purposes. Notice and demand for such taxes plus any interest and penalties imposed by articles 70 to 82 of this title shall be made upon such forms as the division may prescribe, and the notice and demand shall become final fourteen CALENDAR days after the date of delivery of said notice and demand to the employer in person or after the date of the transmittal ~~thereof~~ BY ELECTRONIC MEANS OR by registered mail to ~~his~~ THE EMPLOYER'S last-known address or place of business. The employer may file a

request for review or modification of said assessment with the division within the fourteen days in the manner and form prescribed by the division. The division, on the basis of evidence submitted by the employer disclosing the correct amount of taxes, may amend or otherwise modify its previous assessments.

SECTION 13. 8-79-108 (1), Colorado Revised Statutes, is amended to read:

8-79-108. Refunds. (1) An employing unit may file ~~a written~~ AN application for THE refund of money paid erroneously ~~and~~; IN SUCH FORM AND MANNER AS THE DIRECTOR OF THE DIVISION MAY PRESCRIBE BY RULE, INCLUDING IN PERSON, BY MAIL, BY TELEPHONE, OR BY ELECTRONIC MEANS. If the division determines that such payment, or any portion thereof, was paid erroneously, the division shall either issue to the employing unit a credit memo therefor, or make a refund thereof, in either event without interest thereon. Where no ~~written request~~ APPLICATION is received, and the division determines that taxes have been paid erroneously, the division may, at its option, correct any erroneous payments. Any such correction, if it involves less than one hundred dollars, may be by credit memo. In no event may an employing unit recover money paid erroneously, or otherwise, ~~which~~ THAT has been paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application for refund. If such application for refund is refused, or if no final action is taken thereon within six months, an employing unit may commence an action in the district court for the city and county of Denver for the collection thereof. In the event of court action, no recovery of any money paid prior to January 1 of the first year of the five calendar years immediately preceding the date of the filing of the application shall be allowed. For like cause and for the same period, a recovery, as above indicated, may be allowed on the division's own initiative.

SECTION 14. 8-81-101 (4) (c), Colorado Revised Statutes, is amended to read:

8-81-101. Penalties. (4) (c) Any person aggrieved by a determination of the division made under this subsection (4) may appeal that determination and obtain a hearing before a hearing officer with the right to further appeal as provided by article 74 of this title. The initial appeal must be postmarked OR RECEIVED within fifteen calendar days after the date of notification of such determination by the division; otherwise, the determination shall be final.

SECTION 15. 8-70-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-70-103. Definitions. As used in articles 70 to 82 of this title, unless the context otherwise requires:

(8.5) "ELECTRONIC" HAS THE MEANING SET FORTH IN SECTION 24-71.1-103 (2), C.R.S.; EXCEPT THAT "ELECTRONIC" SHALL NOT INCLUDE USE OF THE TELEPHONE TO TRANSMIT AUDIO OR VOICE COMMUNICATION.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 19, 2002