

CHAPTER 208

LABOR AND INDUSTRY

HOUSE BILL 07-1285

BY REPRESENTATIVE(S) Rice, Garcia, Marshall, Carroll T., and Green;
also SENATOR(S) Veiga.

AN ACT

CONCERNING THE METHOD FOR DETERMINING THE TIMELINESS OF MATTERS FILED WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT UNDER THE "COLORADO EMPLOYMENT SECURITY ACT".

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

SECTION 1. 8-72-102, Colorado Revised Statutes, is amended to read:

8-72-102. Rules. (1) The director of the division has the power to adopt, amend, or rescind, in accordance with section 24-4-103, C.R.S., reasonable and necessary rules ~~and regulations~~ relating to the administration of the "Colorado Employment Security Act" and governing hearings and proceedings under such act.

(2) THE DIRECTOR SHALL ADOPT RULES ESTABLISHING A PROCEDURE FOR AN INDIVIDUAL OR EMPLOYER FILING A PETITION FOR REVIEW PURSUANT TO SECTION 8-74-106 (1) (a) OR (1) (b) OR AN APPEAL PURSUANT TO SECTION 8-73-107 (1) (c) (I) (A), 8-74-103 (1), 8-74-104 (1), 8-76-113 (1) OR (2), OR 8-81-101 (4) (c), OR AN INTERESTED PARTY PRESENTING ADDITIONAL INFORMATION PURSUANT TO SECTION 8-74-102 (1) TO CONTEST A DETERMINATION BY THE DIRECTOR THAT THE INDIVIDUAL, EMPLOYER, OR INTERESTED PARTY FAILED TO COMPLY WITH A DEADLINE SET FORTH IN THE APPLICABLE SECTION BY PROVIDING PROOF THAT THE PETITION FOR REVIEW, APPEAL, OR ADDITIONAL INFORMATION WAS TIMELY MAILED.

SECTION 2. The introductory portion to 8-73-107 (1) (c) (I) and 8-73-107 (1) (c) (I) (A), Colorado Revised Statutes, are amended to read:

8-73-107. Eligibility conditions - penalty. (1) Any unemployed individual shall be eligible to receive benefits with respect to any week only if the division finds that:

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

(c) (I) ~~He~~ THE INDIVIDUAL is able to work and is available for all work deemed suitable pursuant to the provisions of section 8-73-108, and, with respect thereto:

(A) Decisions of the division regarding the ability of the claimant to work, the availability of the claimant for work, and the claimant's active search for work may be appealed by the claimant or by any employer whose account may be charged with any benefits paid pursuant to such decision, if the appeal is ~~made~~ RECEIVED within ~~fifteen~~ TWENTY calendar days, as defined in section 8-70-103 (5), after the date on the notice of any such decision;

SECTION 3. 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~~ AFTER the date of such notice of the claim to present any 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 shall be ~~postmarked, if mailed, or received by the division if submitted in person or by electronic means,~~ within twelve calendar days ~~from~~ AFTER said date. 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~~ AFTER the date of the request for information. On the basis of 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 of the claim, except when the separation from employment is due to a lack of work and no alleged disqualifying circumstances are indicated. 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 4. 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~~ TWENTY calendar days ~~from~~ AFTER 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 5. 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~~ TWENTY calendar days ~~from~~ AFTER the date of notification of the decision of the hearing officer. The director of the division may prescribe 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 6. 8-74-106 (1) (a) and (1) (b), Colorado Revised Statutes, are 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~~ TWENTY 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 records of an interested party and to 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.

(b) Unless, within ~~fifteen~~ TWENTY calendar days after the date of notification of a deputy's decision, an interested party petitions for review of such decision, the decision shall be final. Petitions for review may be accepted out of time only for good cause shown and in accordance with ~~regulations~~ RULES adopted by the director of the division.

SECTION 7. 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~~ TWENTY calendar days ~~from~~ AFTER 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 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~~ TWENTY calendar days ~~from~~ AFTER 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 8. 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~~ TWENTY calendar days after the date of notification of such determination by the division; otherwise, the determination shall be final.

SECTION 9. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to filings made to the division of employment and training or the industrial claim appeals office in the department of labor and employment on or after the applicable effective date of this act.

Approved: May 14, 2007