CHAPTER 7

APPEALS

IN GENERAL

This chapter provides information about state law provisions concerning unemployment compensation appeals, limits for first and second level appeals, and state details about judicial review. Federal law requires states to offer unemployment compensation claimants the opportunity for a fair hearing before an impartial tribunal in the event a claim is denied. Therefore, all state laws provide for a right to appeal. Further, all but a few state laws provide for a second-level appeal. In all states, individuals who are not satisfied with the outcome of the administrative appeal(s) may appeal their cases in the state court system, federal courts, and, as a last resort, the U.S. Supreme Court.

In all states, employers who have an interest in the outcome of a claim decision are granted the right to appeal a decision. In *California Dept. of Human Resources Development v. Java*, 402 U.S. 121 (1971), the Supreme Court interpreted the federal requirement that a state insure full payment when due, found in Section 303(a)(1) of the Social Security Act, to mean that a state cannot withhold payment of benefits to an individual who has previously been found eligible until the agency issues a subsequent decision or determination finding the individual ineligible. Accordingly, an employer's appeal will not prevent payment of benefits to a claimant until a subsequent decision is issued denying benefits. The majority of state laws specifically provide for the payment of benefits pending an appeal of a determination or decision allowing benefits, while other states have either interpreted their laws or have been required by court order to follow this procedure. In all states, this procedure applies to any determination or decision issued allowing benefits.

Most states specify that findings of fact, conclusions of law, or final orders made by a hearing officer or board of review will not be binding in any separate or subsequent proceeding brought in any judicial, administrative, or arbitration proceeding at the state or federal level. The states that do not specify this are listed in the table below. Some state laws provide that information obtained in connection with the UI law may not be used in certain civil lawsuits as well.

TABLE 7-1: STATES THAT DO NOT SPECIFY THAT FINDINGS, CONCLUSIONS, OR ORDERS OF HEARING OFFICERS ARE NOT BINDING IN ANY OTHER PROCEEDING

Alabama	Delaware	Hawaii	Kentucky	Maryland
Mississippi	Puerto Rico	Rhode Island	South Carolina	Virginia
Virgin Islands	West Virginia			

FIRST- AND SECOND-LEVEL APPEALS

FIRST-LEVEL APPEALS—Any interested party—defined by state law, but commonly referring to claimants, employers, and state UC agencies—can file an administrative appeal of a determination when they do not agree with the decision to allow or deny benefits. All appeals of a determination must be timely filed, or the determination will be final. Typically, state laws provide that appeals at the first-level will be conducted by an official called a referee, an examiner, or an administrative law judge. A few states provide for a process wherein a special examiner is designated to review and, where appropriate, redetermine the original decision before the matter is forwarded to an official.

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Once the appeal decision is made, it generally becomes final unless an additional appeal is timely filed to the next level of appeal in a state. However, as an intermediate step before pursuing additional appeals, in some states individuals may request reconsideration of the appeal official's decision before it becomes final.

SECOND-LEVEL APPEALS—Any interested party who disagrees with a first-level administrative appeal decision must timely file an appeal of that decision to the second-level appeal body or the decision becomes final. A few states have no second-level appeal body. In those states, the next level is the state court system.

About half of the states with second-level appeals do so with three individuals who are collectively called a board of review, a board of appeals, or an appeals board. Generally, the members of a board are comprised of individuals who represent labor organizations, employees, employers, and the general public. Some common requirements related to the composition of an appeals board are: location of residence; political affiliation; whether the individual is an attorney; and whether the individual is designated as an employer or employee representative.

In the remaining half of the states with second-level appeals, an existing commission or agency head handles second-level appeals. Some states require a contested determination involving a labor dispute be appealed directly to the second-level appeal body.

TIME LIMITS FOR FILING APPEALS AND FILING WITH APPELLATE ENTITIES—The number of days for filing a first- or second-level appeal varies among the states; ranging from 7 to 30 days after mailing, delivery, or electronic transmission of a notice of determination or decision to an interested party. Some states specify that a "day" is defined as a calendar day, while others do not define "day." Most states extend the filing deadline date when that date is a Saturday, Sunday, holiday, or any other day the state agency is closed. Many states allow an appeal filing deadline to be extended, and thereby allow a party to file an appeal after the deadline, if the appealing party can meet the state law's standard for doing so, such as by showing good cause for filing the late appeal. State-specific information for filing first- or second-level appeals can be found in Table 7-2.

TABLE 7-2: TIME LIMITS FOR FILING APPEALS

State	First-Level Appeals	Second-Level Appeals	
	Number of Days for Filing	Number of Days for Filing	Appellate Entity
AL	15[1] after mailing; 7[1] after delivery	15[1] after mailing date	Board of Appeals
AK	30 after mailing or personal delivery; an additional 3 days if mailed	30 after mailing or personal delivery; an additional 3 days if mailed	Commissioner
AZ	15[1] after mailing; 7[1] after delivery	30[1] after mailing or electronic transmission	Appeals Board
AR	20[1] after mailing or delivery	20[1] after mailing or delivery	Board of Review
CA	30[1] after mailing date on notice or personal service	30[1] after mailing date on notice or personal service	Appeals Board
CO	20[1] after mailing or personal delivery	20[1] after mailing or personal delivery	Industrial Claim Appeals Office
CT	21[1] after notice mailed or provided	21[1] after mailing	Board of Review
DE	10[1] after mailing	10 after decision is final	UI Appeal Board
DC	15[1] after mailing or actual delivery	No Second-Level Appeal	
FL	20[1] after mailing or delivery	20[1] after mailing or delivery	Reemployment Assistance Appeals Commission
GA	15[1] of decision release date	15[1] of decision release date	Board of Review
HI	10 after mailing or delivery	No Second-Level Appeal	

TABLE 7-2: TIME LIMITS FOR FILING APPEALS			
State	First-Level Appeals	Second-Level Appeals	
	Number of Days for Filing	Number of Days for Filing	Appellate Entity
ID	14 after mailing or delivery	14 after actual mailing or delivery	Industrial Commission
IL	30[1] after mailing or delivery	30[1] after mailing or delivery	Board of Review
IN	10 after mailing or delivery; an additional 3[1] if mailed	15 after mailing or delivery; an additional 3[1] if mailed	Review Board
IA	10[1] after date of decision	15[1] after date decision	Employment Appeal Board
KS	16[1] after mailing or delivery	16[1] after mailing or delivery	Board of Review
KY	30 after mailing	30 after mailing	UI Commission
LA	15 after mailing	15 after mailing	Board of Review
ME	15[1] after mailing	15[1] after mailing	UI Commission
MD	15[1] after mailing or delivery	15[1] after mailing or delivery	Board of Appeals
MA	10 after mailing or delivery	30 after mailing	Board of Review
MI	30 after mailing, by facsimile, or other electronic method	30 after mailing, by facsimile, or other electronic method	UI Appeals Commission
MN	20[1] after mailing, facsimile, or electronic transmission	No Second-Level Appeal	
MS	14 after notification or mailing	14 after notification or mailing	Board of Review
MO	30 after date of notification or mailing	30 after date of notification or mailing	Labor Commission
MT	10 after mailing	10 after mailing	Unemployment Insurance Appeals Board
NE	20[1] after delivery or mailing	No Second-Level Appeal	
NV	11 after mailing or personal service of determination or redetermination	11 after mailing or delivery	Board of Review
NH	14[1] after mailing	14[1] after mailing	Appellate Board
NJ	7[1] after delivery, 10[1] after mailing	20[1] after notification or mailing	Board of Review
NM	15[1] from the date on the notice	15[1] from the date on the notice	Board of Review
NY	30 after mailing or personal delivery	20 after mailing or personal delivery	Appeal Board
NC	30 after notification or mailing, whichever is earlier	10 after notification or mailing, whichever is earlier	Board of Review
ND	12 after mailing or service	12 after mailing or service	Bureau
OH	21[1] after mailing of determination or redetermination	21[1] after mailing	Unemployment Compensation Review Commission
OK	10[1] after mailing or delivery	10[1] after mailing or delivery	Board of Review
OR	20 after mailing or delivery	20 after mailing or delivery	Employment Appeals Board
PA	21[1] days after the determination date	21 days after the decision date	Unemployment Compensation Board of Review
PR	15 after mailing or delivery	15 after mailing or delivery	Secretary of Labor
RI	15[1] after mailing	15 after mailing	Board of Review
SC	10 after mailing	10[1] after mailing	Department of Employment and Workforce Appellate Panel
SD	15 after mailing	15 after mailing or notification	Secretary of Labor and Regulation

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TABLE 7-2: TIME LIMITS FOR FILING APPEALS			
State	**First-Level Appeals**	**Second-Level Appeals**	
	Number of Days for Filing	**Number of Days for Filing**	**Appellate Entity**
TN	15[1] after mailing or delivery, whichever occurs first	15[1] after mailing or delivery, whichever occurs first	Office of Administrative Review
TX	14[1] after mailing	14[1] after mailing	Commission Appeals
UT	10[1] after mailing or delivery	30[1] after mailing or delivery	Workforce Appeals Board
VT	30 from date of the determination	30 from date of the decision	Employment Security Board
VI	10 after mailing or delivery	No Second-Level Appeal	
VA	30[1] after mailing date or delivery	30 after mailing or delivery	Office of Commission Appeals
WA	30 after mailing or notification, whichever is earlier	30 after mailing or notification, whichever is earlier	Commissioner's Review Office
WV	8[1] after mailing or delivery	8[1] after mailing or delivery	Board of Review
WI	14 after mailing or ~~d~~elivery, whichever first occurs	21 from the date of the decision	Labor and Industry Review Commission
WY	28[1] after mailing	28[1] after mailing	Employment Security Commission

[1] Indicates "calendar" days If unmarked, type of "days" is not specified

JUDICIAL REVIEW

After the first (for states with no second level appeal opportunity) or second level appeal, all states' laws provide for an additional level of appeal called judicial review, which is an appeal to the state's court system. Depending on state law, this appeal is filed at the state's trial or appellate court level.

The decision of the administrative appeals body becomes final unless an appeal is filed for judicial review. Some states require the decision of the administrative appeals body to be final for a specified number of days before a request for judicial review may be filed. In general, the time limit for filing for judicial review ranges from 10 to 30 days, as shown in Table 7-3.

TABLE 7-3: JUDICIAL REVIEW			
State	**Number of Days for Filing**		**Court of Initial Jurisdiction**
	After Notification	**Other**	
AL		30 from the date the Board decision becomes final	Circuit Court in county where claimant resides; or if claimant not residing in state, claimant must file in the county where claimant last worked or resided
AK	30[1]		Superior Court
AZ	30[1]		Court of Appeals
AR	30[1]		Court of Appeals
CA		Within 6 months of date of decision, or date it is designated a precedent, whichever is later	Superior Court; by court rule, no statutory provision
CO	21[1]		Court of Appeals

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TABLE 7-3: JUDICIAL REVIEW			
State	**Number of Days for Filing**		**Court of Initial Jurisdiction**
	After Notification	**Other**	
CT	30[1]		Superior Court in Hartford or district where appellant resides
DE	10 + 10[2]		Superior Court
DC		Within 30 days after date of decision	Court of Appeals
FL		Within 30[1] days of date of entry of decision (prescribed by appellate rules)	District Court of Appeals in appellate district where claimant resides or the job separation arose, or in the appellate district where the order was issued
GA	15 + 15[2]		Superior Court in county or city where claimant last worked
HI		30 from preliminary ruling or after service of certified copy of final agency decision and order	Circuit Court in county where claimant resides, or in county or city where claimant last worked
ID	42		Supreme Court
IL	35		Circuit Court in county where claimant resides or county where business is located; non-resident may file suit in Circuit Court of Cook County
IN		30[1] days from date of filing notice of intention to appeal	Court of Appeals
IA	30[1] after date of notice		District Court in county where claimant resides; non-resident may file suit in District Court of Polk County or where claimant last worked
KS	16[1]		District Court in county where claimant resides; non-resident may file suit in Shawnee County District Court or in county in which business is located
KY		20 days after date of decision	Circuit Court in county or city in which claimant last worked
LA	15		District Court where claimant resides; or if claimant not residing in state at time of filing petition, claimant may file in District Court in the parish where claimant resided when the UI claim was filed or in the parish where the Louisiana Workforce Commission is located
ME	30[1]		Superior Court in county where plaintiff lives or does business
MD	30		Circuit Court for Baltimore City, or one of the Circuit Courts in a county in Maryland
MA	30		District Court in county where claimant resides, or in the county or city where claimant last worked, or in the district of employer's usual place of business
MI	30		Circuit Court in county where claimant resides, or last worked, or county where the business is located
MN	30[1]		Court of Appeals
MS	10 + 10[2]		Circuit Court of the county where party resides, the county where the action arose, or in the county of employment
MO	10 + 20[2]		Appellate Court; appeals on interstate claims will be in Court of Appeals for the Western District
MT	30		District Court in county in which claimant resides
NE	30		District Court in county in which claimant resides or last worked; a District Court parties agree upon; or District Court of Lancaster County
NV	11		District Court in the county where employment was performed
NH	30		Supreme Court
NJ	45		Superior Court, Appellate Division

TABLE 7-3: JUDICIAL REVIEW			
State	Number of Days for Filing		Court of Initial Jurisdiction
	After Notification	Other	
NM	30		District Court in the county where claimant resides
NY	30		Supreme Court, Appellate Division, Third Department
NC	30		Superior Court in county where claimant resides or the county where the business is located
ND	30		District Court
OH	30		Court of Common Pleas in county where claimant resides or last worked, or the county where the business is located
OK	30		District Court in county where claimant resides; non-resident may file suit in District Court of Oklahoma County
OR		30 days after order is served	Court of Appeals
PA	30[1]		Commonwealth Court
PR	30		Court of First Instance where claimant resides
RI	30		District Court - Sixth Division, State of Rhode Island
SC	30		Administrative Law Court
SD		30 days of the date of decision	Circuit Court
TN		30 days after decision of commissioner has become final	Chancery Court in county where claimant resides; non-resident may file suit in Chancery Court of the county where employer is located
TX		14 days after decision of commissioner has become final	Civil Court in county where claimant resides; non-resident may file suit in Travis County Court or in county where claimant last resided or where claimant's last employer's principal place of business is located
UT		30 days after date of decision	Court of Appeals
VT		30 days after date of decision	Supreme Court
VA	30		Circuit Court where claimant last worked
VI	30		District Court
WA	30		Superior Court; appeals on intrastate claims filed in petitioner's choice of Thurston County, or county of residence or business; appeals on interstate claims in Thurston County
WV	30		Circuit Court of Kanawha County
WI	30		Circuit court of the county where plaintiff resides, except if the plaintiff is a state agency, the proceedings must be in the state where the defendant resides; if the plaintiff is a non-resident of Wisconsin, the proceedings must be in the Circuit Court of the county where the claim arose; cases can be brought in any other county circuit court if the parties and the court agree
WY	30		District court of the county where the administrative action was taken, or where the claimant resides, or where the employer's principal place of business is located

[1] Indicates "calendar" days

[2] Where two figures are shown, the first is the number of days after which the decision becomes final with the state agency; the second is the additional time allowed to seek judicial review.