Agency Name: Department of Employment and Workforce

Statutory Authority: 41-29-110 and 41-35-720

Document Number: 4691

Proposed in State Register Volume and Issue: 40/10

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Labor, Commerce and Industry Committee

120 Day Review Expiration Date for Automatic Approval 05/10/2017

Final in State Register Volume and Issue: 41/5

Status: Final

Subject: Appeals to Appeal Tribunal

History: 4691

By Date Action Description Jt. Res. No. Expiration Date

- 10/28/2016 Proposed Reg Published in SR

- 01/10/2017 Received by Lt. Gov & Speaker 05/10/2017

S 01/11/2017 Referred to Committee

H 01/12/2017 Referred to Committee

S 03/22/2017 Committee Requested Withdrawal

120 Day Period Tolled

- 03/22/2017 Withdrawn and Resubmitted 05/10/2017

H 05/03/2017 Resolution Introduced to Approve 4261

- 05/10/2017 Approved by: Expiration Date

- 05/26/2017 Effective Date unless otherwise

provided for in the Regulation

Document No. 4691

**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

CHAPTER 47

Statutory Authority: 1976 Code Sections 41-29-110 and 41-35-720

47-51. Appeals to Appeal Tribunal.

**Synopsis:**

The South Carolina Department of Employment and Workforce proposes to amend Regulation 47-51 in order to clarify the procedure for employers and claimants in presenting unemployment insurance (UI) cases before the Department.

The Notice of Drafting regarding this regulation was published in the *State Register* on August 26, 2016.

Section-by-Section Discussion:

47-51. This section will clarify the procedure for employers and claimants in presenting unemployment insurance (UI) cases before the Department.

**Instructions:**

Print regulation as shown below.

**Text:**

47-51. Appeals to the Appeal Tribunal.

A. The Presentation of Appeals.

1. The party appealing from any determination of a claims adjudicator or special examiner shall file electronically, by fax, by mail, or otherwise deliver to the Department a Notice of Appeal, setting forth the grounds for the appeal. Copies of the Notice of Appeal shall be mailed or electronically delivered to the other interested parties.

2. Upon the scheduling of a hearing for an appeal, a Notice of Hearing shall be mailed to all interested parties to the appealed claim at least seven (7) calendar days prior to the date of hearing, specifying the place and time of hearing, and the hearing official.

B. Disqualification of Members of Appeal Tribunals.

No person shall serve on an Appeal Tribunal in the hearing of any appeal in which he is interested. Challenges to the interest of any person serving on an Appeal Tribunal may be heard and decided by the Appeal Tribunal or its designee.

C. Hearing of Appeals.

1. All Appeal Tribunal hearings shall be de novo in nature and conducted in such manner as to ascertain the substantial rights of the parties. The Appeal Tribunal shall include in the record and consider as evidence all Department records material to the appeal. Any party to the appeal may present relevant testimony. The Appeal Tribunal shall examine a party and his witnesses, and may examine the witnesses of any opposing party. The Appeal Tribunal, with or without notice to any of the parties, may take additional evidence at the hearing as it deems necessary. After a hearing and prior to rendering a decision, the Appeal Tribunal, with notice to the interested parties as provided for in Appeal Regulation 47-51, A.2, may call parties and witnesses to appear before it for the taking of additional evidence as it deems necessary.

2. The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate the facts involved in writing. Agreed upon stipulations shall be included in the record. The Appeal Tribunal may decide the appeal on the basis of such stipulations, or, in its discretion, may set the appeal for a hearing and take further evidence or arguments, as it deems necessary to determine the appealed claim.

3. Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the South Carolina Rules of Evidence.

D. Adjournments of Hearings.

1. The Appeal Tribunal shall use its best judgment as to when adjournments of a hearing shall be granted, in order to secure all necessary evidence and to ensure fairness to all parties.

2. If the appealing party fails to appear at the hearing, the Appeal Tribunal may dismiss the appeal or issue a decision on the basis of the Department records.

E. The Determination of Appeals.

1. Following the conclusion of an appeal hearing, the Appeal Tribunal shall, within thirty (30) days, issue a written decision detailing the findings of fact and conclusions of law. The Appeal Tribunal shall set forth its findings of fact, its decision, and the reasons therefor.

a. In addition to the issues raised by the appealed determination the Appeal Tribunal may consider all issues affecting claimant’s rights to benefits from the beginning of the period covered by the determination to the date of the hearing.

b. The Appeal Tribunal may pass upon any offer of work complying with Regulation 41-23, separation, or question of availability arising between the filing of an appeal and the Appeal Tribunal hearing in those cases in which the Department has issued no determinations with respect to such subsequent issues.

c. The Appeal Tribunal may pass upon any issue framed prior to the filing of the appeal or the determination from which the appeal is taken, and with respect to which no determination has been issued by the Department.

d. The Appeal Tribunal at a hearing may receive and consider appeals from determinations issued subsequent to the determination and appeal giving rise to the hearing, provided such appeals are timely.

e. Sub-Items (a)(b)(c)(d) supra apply only when the parties are identical or present at the Appeal Tribunal hearing or are properly notified of the issue or issues.

2. Copies of all decisions and the reasons therefore shall be mailed to all parties to the appeal.

F. Notice of Rights to Appeal from Appeal Tribunal Decisions.

Each Appeal Tribunal decision sent to the parties to an appeal shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the manner and time period for filing an appeal from the decision.

**Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Rationale:**

The purpose of amending Regulation 47-51 is to clarify the procedure for employers and claimants in presenting their cases. S.C. Code Ann. §41-35-720 states the Department must promulgate regulations establishing the rules of procedure for hearings and appeals before the Department, and specifically provides that the “rules of procedure are not required to conform to common law or statutory rules of evidence and other technical rules of procedure.”

Currently, the language states, “[a]ll Appeal Tribunal hearings shall be de novo in nature and conducted informally in conformity with the [APA] and in such manner as to ascertain the substantial rights of the parties.” This language creates confusion because (1) the APA does not expressly allow for an informal process; and (2) the regulation does not conform with Section 41-35-720.

Regulation 47-51 also contains references to mailings that are no longer applicable under the operations of the Department and current statute.