Agency Name: Department of Employment and Workforce

Statutory Authority: 41‑27‑510, 41‑35‑720, and 41‑35‑760

Document Number: 5164

Proposed in State Register Volume and Issue: 46/10

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Labor, Commerce and Industry Committee

120 Day Review Expiration Date for Automatic Approval: 05/10/2023

Final in State Register Volume and Issue: 47/5

Status: Final

Subject: Representation before Appeal Tribunal and the Appellate Panel

History: 5164

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

‑ 10/28/2022 Proposed Reg Published in SR

‑ 01/10/2023 Received President of the Senate & Speaker 05/10/2023

S 01/10/2023 Referred to Committee

H 01/11/2023 Referred to Committee

S 01/31/2023 Resolution Introduced to Approve 470

H 04/13/2023 Committee Requested Withdrawal

120 Day Period Tolled

‑ 04/13/2023 Withdrawn and Resubmitted 05/10/2023

S 04/27/2023 Resolution Introduced to Approve 756

‑ 05/10/2023 Approved by: Expiration Date

‑ 05/26/2023 Effective Date unless otherwise

provided for in the Regulation

Document No. 5164

**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

CHAPTER 47

Statutory Authority: 1976 Code Sections 41‑27‑510, 41‑35‑720, and 41‑35‑760

47‑55. Representation before Appeal Tribunal and the Appellate Panel.

**Synopsis:**

R.47‑55 describes how a party may be represented before an Appeal Tribunal or the Appellate Panel. The Department proposes amending this regulation to clarify who can represent individuals, businesses, and other entities before the Appeal Tribunal and Appellate Panel, and to distinguish, for the purposes of representation, between unemployment insurance benefit proceedings and unemployment insurance tax proceedings. The Notice of Drafting was published in the *State Register* on September 23, 2022.

Section‑by‑Section Discussion:

A.1. Revision to establish scope of self‑representation before Tribunal and Panel.

A.2. Addition to clarify that Department employees can represent the Department.

A.3. Addition to clarify government employees may represent their office or agency.

B. 1. Revision to clarify business units may be represented by employees or attorneys in benefit hearings.

B.2. Renumbered (previously part of section A).

C.1. Addition to permit business entities to be represented by attorneys or an officer, partner, member, or employee of the business entity in unemployment tax hearings.

C.2. Addition to permit a party to be represented by a certified public accountant in unemployment insurance tax proceedings.

D. Renumbered (previously section B).

**Instructions:**

Replace R. 47‑55, *Representation before Appeal Tribunal and the Appellate Panel*, in its entirety with this amendment.

**Text:**

47‑55. Representation before Appeal Tribunal and the Appellate Panel.

A. Parties and Their Representatives in General.

1. An individual person not admitted to practice law in South Carolina may represent himself or herself in any proceeding before an Appeal Tribunal or the Appellate Panel but may not represent another person except as expressly allowed by this regulation. A party proceeding without legal representation shall remain fully responsible for compliance with the Department’s regulations and the Administrative Procedures Act.

2. Department employees may represent the Department in any proceeding before an Appeal Tribunal or the Appellate Panel.

3. State, local, and federal government employees may represent their offices, agencies, or both before the Appeal Tribunal or the Appellate Panel.

B. Unemployment Insurance Benefit Proceedings.

1. A partnership, corporation, association, or limited liability company may be represented by a member, partner, officer, or employee thereof. Nothing in this regulation shall be construed as prohibiting any employee or agent of a business entity from providing factual information to the Appeal Tribunal or the Appellate Panel. Nothing in this regulation shall be construed as prohibiting any employee or business entity from being represented by an attorney licensed to practice law in South Carolina, or an attorney possessing a Limited Certificate of Admission pursuant to Rule 405, SCACR if they so choose.

2. Representatives of labor unions, employee or employer organizations, may appear and give factual information or data which will be pertinent or helpful to the determination of the issues before the Appellate Panel or the Appeal Tribunal.

C. Unemployment Insurance Tax Proceedings.

1. A party who is not a natural person, such as a business defined in S.C. Code Ann. § 33‑1‑103, may be represented in a proceeding before the Appeal Tribunal or the Appellate Panel by an officer, partner, member, or employee thereof in any unemployment insurance tax proceeding initiated, including proceedings under Regulation 47‑36. Nothing in this regulation shall be construed as prohibiting a party from being represented by an attorney licensed to practice law in South Carolina, or an attorney possessing a Limited Certificate of Admission pursuant to Rule 405, SCACR if they so choose.

2. Any party may be represented by a certified public accountant licensed in South Carolina in any unemployment insurance tax proceeding initiated, including proceedings under Regulation 47‑36.

D. The Appellate Panel or the Appeal Tribunal, in its discretion, may refuse to allow any person to represent others in any proceeding before it who it finds is guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of South Carolina Law, or the Rules, Regulations, and/or instructions of either the Tribunal or the Appellate Panel.

**Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Rationale:**

R.47‑55 describes how a party may be represented before an Appeal Tribunal or the Appellate Panel. The Department proposes amending this regulation to clarify who can represent individuals, businesses, and other entities before the Appeal Tribunal and Appellate Panel. The amendment is also needed to distinguish, for the purposes of representation, between unemployment insurance benefit proceedings and unemployment insurance tax proceedings. The amendment recognizes that unemployment insurance tax proceedings are complex and touch on corporate acquisitions, mergers, and employee misclassification and permits a party to elect to be represented in unemployment insurance tax proceedings by a certified public accountant licensed in South Carolina.