

GUIDELINES FOR PETITION FOR JUDICIAL REVIEW OF UNEMPLOYMENT INSURANCE CLAIMS

You have the right to appeal the decision of the Unemployment Insurance Appeals Board (Board) by filing a Petition for Judicial Review in the Montana District Court of the county in which you reside and in which action any other party to the proceeding before the board must be made a defendant. *Mont. Code Ann. § 39-51-2410(2)*. Please be advised that your Petition must be filed with the Court **within thirty (30) days** of the date of the board's decision. *Id.* A decision which neither party appeals by filing a Petition within 30 days is considered final. *Id. at (1)*.

In all cases, the parties involved in judicial review of an unemployment insurance claim include the claimant and the Department of Labor and Industry (Department). *Mont. Code Ann. § 39-51-2410(1) and Admin. R. Mont. 24.40.109(1)-(2)*. For information on when the employer must be included as a party see *Mont. Code Ann. § 39-51-2410(2) and Admin. R. Mont. 24.40.109(3)-(4)*.

For your convenience, the Department has prepared a form you may use to file your Petition for Judicial Review. Please note that the original Petition must be filed with the Clerk of the Montana District Court. Copies of your Petition must be served on the Department and the other party that appeared before the board (either the employer or the claimant, as the case may be). *Mont. Code Ann. § 39-51-2410(2)*. For more information on how to serve a party see *Mont. R. Civ. Pro. Rule 5*. The Department accepts service by regular U.S. mail at: Department of Labor & Industry, P.O. Box 1728, Helena, MT, 59624. A "Certificate of Service" is included as the last page of the Petition for your convenience. Include the names and addresses of record of all parties upon which you serve the Petition on the Certificate of Service.

The Department is required to send a certified copy of the entire certified record, including the audio recordings of the hearing before the Office of Administrative Hearings (OAH) and Board review proceeding to the District Court. *Mont. Code Ann. § 39-51-2410(3)*. This is the official record for the Court, and each page is marked with a number for parties to use when referring to a specific page in the record. Once the Department receives your Petition, it will file this official record with the District Court and send you a copy. To avoid duplication and confusion, please do not send a second copy of the administrative record to the Court.

The District Court's task is to review the administrative record to determine whether the Board decision is based upon substantial evidence in the record and whether the Board correctly applied Montana's unemployment insurance law. *Mont. Code Ann. § 39-51-2410(5)*.

To find the names and addresses of the Clerks of Court for each county, go online to [Comprehensive Information on Montana Court Clerks](#) and select the Montana county you want to file in. If you have further questions about the judicial review process, contact an attorney or the Clerk of Court in the Montana county in which you may file. To know what information clerks of court can or cannot provide you, go online to: [What Montana Court Clerks can and Cannot do](#).

The following statute governs judicial review of an Unemployment Insurance benefit claim:

Mont. Code Ann. § 39-51-2410. Finality of board's decision – judicial review.

(1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof and judicial review shall be permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all interested parties in the manner provide in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with said court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required to entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.