

GUIDELINES FOR PETITION FOR JUDICIAL REVIEW OF UNEMPLOYMENT INSURANCE CLAIMS

You have the right to appeal the decision of the Unemployment Insurance Appeals Board (formerly the Board of Labor Appeals) 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 the board's decision was issued or that decision is final. *Id.* and § 39-51-2410(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)*.

The Department has prepared a form ("Petition for Judicial Review") which you may use to file your appeal. There are two versions of this form; one for when the Department is the only opposing party and one for when both the employer and the Department are parties. Please note that the original Petition must be filed with the Clerk of the Montana District Court. Copies of your Petition must be sent by U.S. Mail (or hand-delivered) to 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(1) and (4)*.

A "Certificate of Service" must accompany your Petition (it is included in the form for your convenience). Include the names and addresses of all parties to whom you will send a petition on the "Certificate of Service". *Mont. Code Ann. § 39-51-2410(1) and (4)*.

After the Department receives a copy of your Petition, the Administrative Assistant for the Unemployment Insurance Appeals Board will prepare the certified record, which includes audio recordings of the administrative hearing and the oral argument before the Board. A copy of the entire certified record will be sent to the District Court and the interested parties. The parties will each receive copies of the two audio recordings. *Mont. Code Ann. § 39-51-2410(3)*.

The District Court is not allowed to admit new evidence on judicial review. Instead, the task of the District Court is limited to review the administrative record to determine whether the Unemployment Insurance Appeals 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)*.

The names and addresses of the Clerks of Court in each county are available at <http://courts.mt.gov/dcourt/default.mcp.x>. 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.

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.