Agency

Department of Labor

Subject

Establishment of Rules of Procedure for Hearings in Contested Cases to be Conducted by the Labor Commissioner

Inclusive Sections

§§ 31-1-1—31-1-17

CONTENTS

Establishment of Rules of Procedure for Hearings in Contested Cases to be Conducted by the Labor Commissioner

Sec. 31-1-1. Definitions

For purposes of sections 31-1-1 through 31-1-9 inclusive of these regulations the following definitions apply:

(a) "Agency" means the Connecticut Labor Department.

(b) "Commissioner" means the Labor Commissioner of the State of Connecticut whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109.

(c) "Contested case" means a proceeding in which the legal rights, duties or privileges of a party are required by statute to be determined by the agency after an opportunity for a hearing or in which a hearing is in fact held but does not include proceedings on a petition for a declaratory ruling under section 4-176 of the General Statutes of Connecticut, hearings referred to in section 4-168 of the General Statutes of Connecticut, hearings conducted pursuant to Ch. 567 or Ch. 571 of the General Statutes of Connecticut or investigatory hearings conducted pursuant to Ch. 558 of the General Statutes of Connecticut.

(d) "Department" means the Connecticut Labor Department.

(e) "Final decision" means (1) the determination by the commissioner or his designated representative in a contested case or (2) a decision of the commissioner or his designated representative made after reconsideration. The term does not include a preliminary or intermediate ruling by the agency or a ruling of the agency granting or denying a petition for reconsideration.

(f) "Hearing officer" means an individual designated by the commissioner to conduct a hearing in a contested case. Such individual may be a staff employee of the agency.

(g) "Intervenor" means a person, other than a party, granted status as an intervenor by the commissioner or such hearing officer as has been designated by the commissioner in accordance with the provisions of subsection (f) of section 31-1-2 of these regulations.

(h) "Party" means each person (1) whose legal rights, duties or privileges are reguired by statute to be determined by an agency proceeding and who is named or admitted as a party, (2) who is required by law to be a party in an agency proceeding or (3) who is granted status as a party under subsection (e) of section 31-1-2 of these regulations.

(i) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency or public or private organization of any character but does not include the agency conducting the proceeding.

(j) "Proposed final decision" means a final decision proposed by the agency or a hearing officer under section 31-1-7 of these regulations.

(Effective February 2, 1990)

Sec. 31-1-2. Contested cases

(a) When the agency has reason to believe there has been a violation with respect to any statute or regulation it administers, it may issue a complaint by certified mail to the party against whom the agency is complaining.

(b) The notice in contested cases shall contain:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and regulations involved;

(4) A short and plain statement of the matters asserted; and

(5) A statement that each party may, if he desires, be represented at the hearing by an attorney or other designated representative.

(c) If a party can reasonably show a need for additional time to prepare a defense to the alleged violations, an extension of time may be granted by moving the scheduled hearing to a later date. The granting of such a request is within the discretion of the commissioner or such hearing officer as has been designated by the commissioner.

(d) If a party can reasonably show that the complaint is unclear or ambiguous as to the nature of the acts in violation of the law, he may file with the department a written request for a more detailed statement of the nature of the charges against him. The granting or denial of such a request is within the discretion of the commissioner or such hearing officer as has been designated by the commissioner.

(e) Any person seeking to become a party shall file a written petition to become a party with the commissioner and mail copies to all parties, at least five days before the date of hearing. The commissioner or such hearing officer as has been designated by the commissioner shall grant such person status as a party if the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the decision in the contested case.

(f) Any party seeking to intervene shall file a written petition to intervene with the commissioner and mail copies to all parties, at least five days before the date of hearing. The commissioner or such hearing officer as has been designated by the commissioner may grant such person status as an intervenor if the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(g) The five-day requirement in subsections (e) and (f) of section 31-1-2 of these regulations may be waived at any time before or after commencement of the hearing by the commissioner or hearing officer on a showing of good cause.

(h) If a petition is granted pursuant to subsection (f) of section 31-1-2 of these regulations, the commissioner or hearing officer may define the intervenor's participation in accordance with subsection (d) of section 4-177a of the General Statutes of Connecticut.

(i) Answers, motions and any other pleading or request which a party wishes to be considered prior to the hearing may be filed up to five days prior to the date of the hearing. The granting or denial of any such motion or request is within the discretion of the commissioner or such hearing officer as has been designated by the commissioner and shall not of itself entitle any party to a postponement of the hearing. For good cause shown, a

hearing may be continued to a subsequent date.

(Effective February 2, 1990)

Sec. 31-1-3. Pre-hearing procedure in contested cases

(a) Any time after the issuance of a complaint and before the scheduled hearing date, the commissioner or such hearing officer as has been designated by the commissioner may order or a party may request an informal pre-hearing conference. The granting or denial of a request for a pre-hearing conference is within the discretion of the commissioner or such hearing officer as has been designated by the commissioner.

(b) A pre-hearing conference may be held for any of the following purposes:

(i) to discuss the possibility of an informal disposition of the complaint;

(ii) to otherwise simplify or schedule matters to be heard at the formal hearing;

(iii) to narrow the scope of the issues in dispute;

(iv) to obtain stipulations as to matters of fact;

(v) to stipulate as to the qualifications of any expert witnesses who are to testify at the hearing.

(c) A pre-hearing conference need not be recorded, but a written record will be made of any stipulations as to matters of fact, as to the authenticity of documents, or as to the qualifications of expert witnesses. Any such written record will be signed by each of the individual stipulating parties or his attorney and by the commissioner or his designated representative.

(Effective June 24, 1986)

Sec. 31-1-4. Informal disposition in contested cases

(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. An agreement may be negotiated by a party or his attorney and the designated representative of the agency. The acceptance of an agreement is within the discretion of the commissioner.

(b) An agreement shall contain:

(1) The signature of each agreeing party or his attorney; and

(2) The signature of the commissioner accepting and approving the agreement.

(c) An agreement may also contain:

(1) An admission of all jurisdictional facts;

(2) An express waiver of the right to seek judicial review or otherwise challenge or contest the validity of the agreement or any order contained therein;

(3) An express waiver of any requirement that the decision of the agency contain findings of fact and conclusions of law;

(4) A provision that the complaint may be used in construing the terms of the agreement or any order contained therein;

(5) A statement that the agreement or order contained therein shall have the same force and effect as an order entered after a full hearing;

(6) A statement that the agreement or order shall not be effective until accepted and approved by the commissioner; and

(7) Any other appropriate provisions.

(Effective June 24, 1986)

Sec. 31-1-5. Conduct of adjudicative hearings in contested cases

(a) Hearings in contested cases shall be presided over by the commissioner or such hearing officer as has been designated by the commissioner.

(b) The commissioner or hearing officer shall have the power to:

(1) Regulate the course of the hearing and the conduct of the parties and their counsel therein;

(2) Insure that all testimony is given under oath;

(3) Rule upon offers of proof and receive evidence;

(4) Consider and rule upon all motions; and

(5) Require any additional written and/or oral argument.

(c) The commissioner or hearing officer shall have the power to compel attendance of witnesses by subpoena and to require the production of records, physical evidence, papers and documents in accordance with section 4-177b of the General Statutes of Connecticut.

(d) Each party and the commissioner or hearing officer shall have the right to inspect and copy relevant and material records, papers and documents not in the possession of the party or the commissioner or hearing officer and, at a hearing, to respond, cross-examine other parties, intervenors and witnesses, present evidence and argument on all issues involved, enter motions and objections and assert all other rights essential to a fair hearing.

(e) Persons not named as parties or intervenors may, in the discretion of the commissioner or hearing officer, be given an opportunity to present oral or written statements in accordance with subsection (b) of section 4-177c of the General Statutes of Connecticut.

(f) The rules of evidence in an adjudicative hearing shall be as prescribed in section 4-178 of the General Statutes of Connecticut.

(g) If a hearing is held before a hearing officer, a party, before rendition of the final decision, may request a review by the commissioner of any preliminary, procedural or evidentiary ruling made at the hearing. The commissioner may make an appropriate order, including the reconvening of the hearing.

(h) All adjudicative hearings in contested cases shall be recorded and shall be conducted in accordance with the provisions of chapter 54 of the General Statutes of Connecticut.

(i) The prohibitions on ex parte communications in section 4-181 of the General Statutes of Connecticut shall apply from the date of designation of the commissioner or hearing officer to conduct any proceedings in a contested case.

(Effective February 2, 1990)

Sec. 31-1-6. Transcript of the proceedings

(a) At the close of the reception of evidence, any party may file a written request addressed to the agency for a written transcript of the proceedings. If no such written request is filed, the agency may order that a written transcript be prepared.

(b) If any party desires a copy of the transcript, it will be made available to him upon written request and the tendering of the appropriate cost.

(c) Nothing in this section shall relieve the agency of the responsibility under section 4-183 of the General Statutes of Connecticut to transcribe the record for an appeal.

(Effective February 2, 1990)

Sec. 31-1-7. Proposal for decision

(a) When, in a contested case, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral arguments to the members of the agency who are to render the final decision.

(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision.

(c) Except when authorized by law to render a final decision for the agency, a hearing officer shall, after hearing a matter, make a proposed final decision.

(d) The parties and the agency, by written stipulation, may waive compliance with this section.

(Effective February 2, 1990)

Sec. 31-1-8. Final decision in a contested case

(a) The final decision in a contested case shall be rendered by the commissioner or his designated representative.

(b) A final decision shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed.

(c) The agency shall state in the final decision the name of each party and the most recent mailing address, provided to the agency, of the party or his authorized representative.

(d) The final decision shall be delivered promptly to each party or his authorized representative, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. The final decision shall be effective when personally delivered or mailed or on a later date specified by the agency.

(e) The Agency shall proceed with reasonable dispatch to conclude any matter pending before it and, in all contested cases, shall render a final decision within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later, in such

proceedings.

(Effective February 2, 1990)

Sec. 31-1-8a. Reconsideration

(a) Unless otherwise provided by law, a party in a contested case may, within fifteen days after the personal delivery or mailing of the final decision, file a petition for reconsideration of the decision on the ground that: (1) An error of fact or law should be corrected; (2) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (3) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, the agency shall determine whether reconsideration is appropriate. The failure of the agency to make that determination within twenty-five days of such filing shall constitute a denial of the petition. If the agency determines that reconsideration is appropriate, the agency shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision of the agency.

(b) On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion. The procedure set forth in sections 31-1-1 through 31-1-8, inclusive, of these regulations for contested cases shall be applicable to any proceeding in which such reversal or modification of any order is to be considered. The party or parties who were the subject of the original order, and all other interested persons, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has relied on such final decision.

(c) The agency may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal that modification under the provisions of section 4-183 or, if an appeal is pending when the modification is made, may amend the appeal.

(Effective February 2, 1990)

Sec. 31-1-9. Inconsistent regulations

The regulations appearing in sections 31-1-1 through 31-1-8a, inclusive, shall, unless precluded by law, take precedence over any other conflicting or inconsistent regulation pertaining to hearings in contested cases conducted by the labor commissioner.

(Effective February 2, 1990)

Sec. 31-1-10. Reserved

Rules of Procedure for Declaratory Rulings by the Labor Commissioner

Sec. 31-1-11. Definitions

For purposes of Sections 31-1-11 through 31-1-17, the following definitions shall apply:

(a) "Agency" means the Connecticut Labor Department.

(b) "Commissioner" means the Labor Commissioner of the state of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109.

(c) "Contested case" means a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by statute to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176 or hearings referred to in section 4-168 of the general statutes;

(d) "Final decision" means (A) the agency determination in a contested case, (B) a declaratory ruling issued by an agency pursuant to section 4-176 of the general statutes or (C) an agency decision made after reconsideration, but does not include a preliminary or intermediate ruling or order of an agency, or a ruling of an agency granting or denying a petition for reconsideration;

(e) "Intervenor" means a person, other than a party, granted status as an intervenor by an agency in accordance with the provisions of subsection (d) of section 4-176 or subsection (b) of section 4-177a of the General Statutes of Connecticut;

(f) "Party" means each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding or (C) who is granted status as a party under subsection (a) of section 4-177a of the General Statutes of Connecticut;

(g) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency or public or private organization of any character, but does not include the agency conducting the proceeding.

(Effective March 30, 1990)

Sec. 31-1-12. Scope

Sections 31-1-11 to 31-1-17, inclusive set forth the rules of the Connecticut Labor Department governing the form and content of petitions for declaratory ruling, and agency proceedings on such petitions. Petitions for declaratory rulings may be filed on: (1) the validity of any regulation of this agency, and (2) the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of this agency. Any petition for a declaratory ruling not falling in one of these two categories will be rejected in writing by the agency as not being the proper subject for a petition for a declaratory ruling.

(Effective March 30, 1990)

Sec. 31-1-13. Form and content of petitions

(a) **General.** All petitions for declaratory ruling must be addressed to the Commissioner and either mailed or hand delivered to the Commissioner at his or her office. All petitions

must be signed by the person filing the petition, unless represented by an attorney, in which case the attorney may sign the petition. The petition must include the address of the person filing the petition, and the address of the attorney, if applicable.

(b) **Petitions on Validity of Regulation.** A petition for declaratory ruling on the validity of a regulation must contain the following:

(1) the section number and text of the regulation;

(2) the specific basis for the claim of invalidity of the regulation;

(3) any argument by the petitioner in support of the claim of invalidity, with suggested remedy; and

(4) where the regulation at issue was adopted pursuant to the Unemployment Compensation Act (Chapter 567), a statement of the reasons why a declaratory ruling is needed.

Any petition filed which merely requests a ruling on the validity of the regulation, without a detailed claim of invalidity, will be rejected by the agency as incomplete.

(c) **Petitions on Applicability of Statute Regulation, or Final Decision to Specific Circumstances.** A petition seeking a declaratory ruling on the applicability of a statute, regulation, or final decision on a matter within the jurisdiction of the agency to specified circumstances must contain the following:

(1) the specific statute, regulation, or final decision upon which the petition is sought;

(2) a brief explanation of why the petitioner believes that the particular statute, regulation, or final decision is within the jurisdiction of the agency;

(3) a detailed description of the specified circumstances upon which the petition is based;

(4) any argument by the petitioner as to why the petitioner believes that the particular statute, regulation, or final order either is or is not applicable to the specified circumstances; and

(5) in any matter relating to the Unemployment Compensation Act (Chapter 567), a statement of the reasons why a declaratory ruling is needed.

Any petition failing to identify the statute, regulation or final decision in question, or failing to adequately describe the specified circumstances will be rejected in writing by the agency as incomplete.

(d) **Notice.** The petitioner, or his attorney, shall append to the petition for a declaratory ruling a listing of all persons, with addresses, who may have an interest in the declaratory ruling sought to be issued, and shall mail a copy of the petition to all such persons. The petitioner or his attorney must certify that a copy of the petition was mailed to all such persons together with this statement, "Should you wish to participate in the proceedings on this petition, or receive notice of such proceedings or the declaratory ruling issued as a result of this petition, you should contact the office of the Labor Commissioner within (30) days of the date of this petition."

(Effective March 30, 1990)

Sec. 31-1-14. Notice

In addition to the notice required to be given by the petitioner in subsection (d) of this section, the agency shall, within thirty days after the receipt of such petition provide written notice of the filing of the petition (1) to all persons required by any law to receive notice, (2) to all persons who have requested notice of the filing of such petitions on the subject matter of the petition, and (3) to all persons who have requested notice of the filing of any such petitions with the agency. The notice required by this section shall not be required where the agency has rejected the filing of a petition as inappropriate or incomplete in accordance with Section 31-1-12, or subsection (b) or (c) of Section 31-1-13 of these regulations.

(Effective March 30, 1990)

Sec. 31-1-15. Rights of persons to proceeding

(a) **Petitioner as party.** The petitioner is automatically a party to any proceeding on the petition by virtue of having filed said petition, and need not seek designation as a party from the agency.

(b) **Additional Parties.** Any person, whether or not they have received notice of the petition, may file a petition to become a party within forty-five days from the date of filing of the petition. If the petition to become a party sets forth facts demonstrating that the petitioner's legal rights, duties or privileges will be specifically affected by the declaratory ruling to be issued, the agency shall grant the petition and designate the petitioner as a party.

(c) **Intervenors.** Any person, whether or not they have received notice of the petition, may file a petition to become an intervenor within forty-five days from the date of filing of the petition. If the petition sets forth facts demonstrating that the petitioner's participation is in the interest of justice and will not disrupt the orderly conduct of the proceedings, the agency shall grant the petition and designate the petitioner as an intervenor. In addition, any person who files a petition for party status who fails to make the requisite demonstration for party status, may be granted intervenor status.

(Effective March 30, 1990)

Sec. 31-1-16. Agency proceedings on petitions

(a) **Agency Action.** Within sixty days after the filing of a complete petition for a declaratory ruling, but, in any case, no sooner than thirty days after the filing of the petition, the agency shall do one of the following, in writing:

(1) Issue a declaratory ruling in accordance with the request in the petition containing the names of all parties to the proceeding, the particular facts upon which it is based, and the reasons for the conclusions contained therein; or

(2) Order that the matter be the subject of a hearing as a contested case; or

(3) Notify the parties that a declaratory ruling will be issued by a date certain; or

(4) Decide not to issue a declaratory ruling and initiate regulation making proceedings; or

(5) Decide not to issue a declaratory ruling, stating the reasons for its action.

(b) **Notice.** A copy of the agency action taken in accordance with subsection (a) of this section shall be delivered to the petitioner and all other parties either in person, or by United States mail, certified or registered, postage prepaid, return receipt requested.

(c) **Hearing.** Any hearing ordered pursuant to subdivision (2) of subsection (a) of this section shall be conducted in accordance with the procedures set forth in Conn. Agencies Regs. Section 31-1-5 through 31-1-7, inclusive and a final decision shall be rendered in accordance with the provisions of Conn. Agencies Regs. Section 31-1-8.

(d) **Effective Date, Appeal Date.** Declaratory Rulings shall be effective when personally delivered or mailed, or on such later date specified by the agency in the ruling, except that for the purposes of any appeal from the declaratory ruling, the date of personal delivery or mail shall control.

(e) **Contested Case Appeals.** Declaratory Rulings shall have the same status and binding effect as an order in a contested case, and shall be a final decision in a contested case for the purposes of appeals in accordance with Conn. Gen. Stat. Section 4-183.

(f) **Failure to Act.** If the agency does not issue a declaratory ruling on a complete petition within 180 days after the filing of the petition, or later if agreed to by the parties, the agency shall be deemed to have decided not to issue a ruling.

(Effective March 30, 1990)

Sec. 31-1-17. Declaratory rulings in unemployment compensation matters

(a) **General.** Petitions for declaratory rulings may be filed on the validity of any regulation adopted pursuant to the Unemployment Compensation Act (Chapter 567) or the applicability to specified circumstances of any provision of the Unemployment Compensation statutes, regulations or a final decision (as defined in Conn. Gen. Stat. section 4-166 (3)) on a matter within the jurisdiction of the Commissioner in his or her capacity as Administrator of the Unemployment Compensation Act. Such petitions are subject to the rules governing form and content of petitions and agency proceedings, set forth in Sections 31-1-11 to 31-1-17, inclusive.

(b) **Assessing Propriety of Ruling.** Any petition described in subsection (a) of this section, which is filed with the Commissioner in his or her capacity as the Administrator of the Unemployment Compensation Act will be subject to heightened scrutiny as to the necessity for issuance of a declaratory ruling. The Commissioner will normally decline to issue a declaratory ruling in any instance in which it appears that the petitioner's rights and interests are currently capable of being addressed through formal adjudication, determination of eligibility or liability, or any other legal process provided for within Chapter 567, for which there is a statutory right of appeal.

In determining whether a declaratory ruling or some other proceeding governed by Chapter 567 is more appropriate, the Commissioner in his or her capacity as Administrator of the Unemployment Compensation Act will consider the following factors, where relevant:

(1) whether the subject matter of the petition will become an issue in controversy in the

foreseeable future and adjudication under the provisions of Chapter 567 will be necessary;

(2) whether a declaratory ruling is critical to structuring a legal relationship between the petitioner and any other party or parties;

(3) whether a particular set of factual circumstances is critical to a proper ruling, and if so, whether those factual circumstances are in dispute or likely to change;

(4) whether other parties' legal interests are affected and if so, in what forum such interests would be most effectively represented;

(5) the number of other individuals in substantially similar circumstances and whether the decision will have significant precedential value;

(6) the particular interests affected and the likely benefits to be derived from issuance of a declaratory ruling;

(7) the complexity of the legal and factual issues presented;

(8) the potential impact of a declaratory ruling on the normal adjudicatory process under Chapter 567;

(9) whether the normal adjudicatory process, or the process of certifying questions of law to the Employment Security Board of Review pursuant to Conn. Gen. Stat. Section 31-249f (a) provides a suitable alternative to a declaratory ruling;

(10) whether a declaratory ruling would be more appropriately issued by the Commissioner in his or her capacity as Administrator of the Unemployment Compensation Act or by the Employment Security Board of Review;

(11) whether the administrative costs and burdens of a declaratory ruling are justified by the scope of the interest affected and the availability of any alternate forum; and

(12) whether there is a need for the agency to clarify the meaning of a statute, regulation or final decision for future cases.

(c) **Role of the Employment Security Board of Review.** The Commissioner will consult with the Employment Security Board of Review in determining whether or not to issue a declaratory ruling in response to any petition filed pursuant to this section. The Employment Security Board of Review shall be granted intervenor status in any declaratory ruling proceeding instituted pursuant to this section.

(Effective March 30, 1990)

Agency
Department of Labor

Subject
Provision of Assistance Within Existing Resources to, and Access to Programs Specific to the Job Training and Placement Needs of, Displaced Homemakers

Inclusive Sections
§§ 31-3g-1—31-3g-6

CONTENTS

Provision of Assistance Within Existing Resources to, and Access to Programs Specific to the Job Training and Placement Needs of, Displaced Homemakers

Sec. 31-3g-1. Definitions

(a) "Commissioner" means the Labor Commissioner of the State of Connecticut whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109.

(b) "Labor Department" means the State of Connecticut Labor Department.

(c) "Advisory Council" means the council of not less than 10 nor more than 15 members appointed by the Commissioner to consult with and advise the Commissioner as to criteria which shall be used to identify displaced homemakers and determine programs and services appropriate to the skills development of the applying displaced homemaker. The Advisory Council shall include representatives from the departments of Labor, Education, Higher Education, Income Maintenance, Human Resources, the Permanent Commission on the Status of Women, providers of assistance and program access services, and such other members the Commissioner deems necessary.

(d) "Displaced homemaker" means an individual who

(1) has worked in the home providing unpaid household services for family members

(2) has been dependent on the income of another family member but is no longer supported by that income or is receiving public assistance, and

(3) has had or would have difficulty in securing employment sufficient to provide for economic independence.

(e) "Financial Resources" means the amount of income available to a displaced homemaker.

(f) "Level of marketable skills" means the degree of ability a displaced homemaker possesses to secure employment.

(g) "Area of residence" means a geographical location in which a displaced homemaker resides including, but not limited to, any area of high unemployment of limited access to appropriate services.

(Effective October 30, 1985)

Sec. 31-3g-2. Provision of service

The Commissioner of Labor shall provide assistance within existing resources to displaced homemakers and access to programs specific to the job training and placement needs of displaced homemakers. The Commissioner shall, through the Job Service office of the Employment Security Division, provide such access to all existing programs and services suitable to the skill development of the applying displaced homemaker.

In providing the appropriate assistance and access to all existing programs deemed suitable, the Commissioner shall consider the applicants, with an emphasis on women over the age of thirty-five years, and their need for services based on their:

(1) financial resources,

(2) level of marketable skills,

(3) ability to speak the English language and

(4) area of residence.

The Commissioner shall refer applicants to the appropriate support services necessary for employment and training.

(Effective October 30, 1985)

Sec. 31-3g-3. Types of services

Such assistance and program access services shall include, but not be limited to:

(1) vocational counseling and education,

(2) assessment of skills,

(3) job training for various occupations, including skilled craft and technical vocations for which there is a demand in industry,

(4) job placement,

(5) assistance with child care and transportation,

(6) personal counseling,

(7) information and referral, and

(8) financial management counseling.

(Effective October 30, 1985)

Sec. 31-3g-4. Assistance & access to programs

The Commissioner shall within existing resources:

(1) identify and provide to applying displaced homemakers information on all appropriate Labor Department programs and services,

(2) refer applying displaced homemakers to such appropriate programs,

(3) encourage maximum utilization by displaced homemakers of these programs,

(4) provide information to applying displaced homemakers on appropriate programs of which he is aware in other agencies.

(Effective October 30, 1985)

Sec. 31-3g-5. Duties of advisory council

(a) The advisory council shall consult with and advise the Commissioner as to criteria which shall be used to identify displaced homemakers and determine programs and services appropriate to the skills development of the applying displaced homemaker. The advisory council shall develop specific recommendations for funding multi-service programs which meet the training and job placement needs of displaced homemakers.

(b) The advisory council shall request annually information from the Commissioner on all Labor Department programs and services appropriate to displaced homemakers.

(c) The advisory council shall meet on a regular basis sufficient to carry out its duties and shall present an annual written report to the Commissioner.

(Effective October 30, 1985)

Sec. 31-3g-6. Consideration by labor commissioner

The Commissioner shall consider the recommendations of the advisory council in further funding requests necessary to provide services for the displaced homemaker population.

(Effective October 30, 1985)

Agency
Department of Labor

Subject
Subsidized Transitional Employment Program (S.T.E.P.)

Inclusive Sections
§§ 31-3s-1—31-3s-8

CONTENTS

Subsidized Transitional Employment Program (S.T.E.P.)

Sec. 31-3s-1. Definitions

For purposes of Sections 31-3s-1 through 31-3s-8, inclusive, of the Regulations of Connecticut State Agencies, the following definitions apply:

(a) "Commissioner" means the Labor Commissioner, whose mailing address is Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, CT 06109, or his designee.

(b) "Employable" means one who (1) is between the ages of 16 and 65, (2) has no documented physical or mental impairment (or who has an impairment expected to last less than six months as determined by the Department of Income Maintenance Commissioner), which would prohibit him/her from working or participating in an education, training, or other work readiness program, (3) is required to register with the Department of Labor pursuant to Section 17-273b of the General Statutes, (4) is not a full-time high school student, (5) is not pending receipt of Supplemental Security Income, Social Security income, or financial assistance through another program administered by the Department of Income Maintenance, and (6) is not needed to care for a child under two years of age or an incapacitated child or spouse.

(c) "Employer" means: (1) any corporation, partnership, sole proprietorship, or other entity in either the private or public sector, including any municipality or the State of Connecticut, which employs one or more employees in the State of Connecticut and is registered with the Connecticut Department of Labor for purposes of liability for unemployment compensation contributions under Section 31-223 of the General Statutes, or (2) a religious, charitable, educational, or other organization for whom services are excluded under the definition of "employment" contained in subsection (a) of section 31-222 of the general statutes.

(d) "Employment" means service performed under an express or implied contract of hire creating the relationship of employer and employee, and which constitutes employment for the purposes of federal and state law.

(e) "Full-time" means employment for the number of hours which prevail for the industry or employment sector in which the work is performed.

(f) "Job Center" means the Connecticut Department of Labor office which administers unemployment compensation and a public employment bureau for a given labor market area of the state.

(g) "Job ready" means one who is able and available for work, meets the educational and skill demands of the local labor market, and is not subject to any extraneous conditions (e.g. language barriers, child care, lack of transportation) which would significantly restrict an individual's ability to accept full-time employment.

(h) "Nonprofit employer" means an organization exempt from federal taxation under Section 501 (c) (3) of the Internal Revenue Code.

(i) "Participant" means a General Assistance recipient deemed eligible for participation in the Department of Labor's Subsidized Transitional Employment Program (S.T.E.P.).

(j) "Program" means the Department of Labor's Subsidized Transitional Employment Program (S.T.E.P.).

(Effective March 30, 1993)

Sec. 31-3s-2. Eligibility for participation in program

(a) **Eligibility determination.** An individual shall be eligible for participation in the Subsidized Transitional Employment Program (S.T.E.P.) upon the following determination:

(1) The individual is a recipient of General Assistance as provided in Title 17, Chapter 308 of the General Statutes;

(2) The individual is employable and job ready; and

(3) The individual is referred to the Job Center from a local General Assistance office.

(b) **Employable and job ready evaluation.** In order to determine whether a General Assistance recipient is employable and job ready, the local General Assistance office in the town or city in which the individual resides may either conduct its own evaluation of employable and job ready status, or may refer the individual to an appropriate resource for said evaluation.

(c) **Referral to Job Center.** If the individual is found to be employable and job ready by the local General Assistance office or an appropriate resource, the individual may be referred to a local or regional Job Center.

(d) **Confirmation of job ready status.** The Job Center shall conduct its own evaluation of the individual for confirmation of job ready status.

(e) **Classification as S.T.E.P. participant.** If the Job Center confirms that the General Assistance recipient is job ready, the General Assistance recipient shall be classified as a S.T.E.P. participant. The Job Center shall report confirmation of the job ready status to the referring General Assistance office.

(f) **Not Job Ready—Towns with more than 300 General Assistance recipients.** If the Job Center determines that the General Assistance recipient is not job ready and the General Assistance recipient was referred from a general assistance office located in a town with more than three hundred (300) general assistance recipients as of December 31, 1991, the Job Center shall refer the recipient back to the local General Assistance office for further assistance.

(g) **Not Job Ready—Towns with less than 300 General Assistance recipients.** If the Job Center determines that the General Assistance recipient is not job ready and the General Assistance recipient was referred from a town with less than three hundred (300) General Assistance recipients as of December 31, 1991, the Job Center, in accordance with the particular non-financial agreement executed with the local General Assistance office, may provide assistance to the recipient in obtaining job ready status, may refer the recipient back to the local General Assistance office for further assistance, or may coordinate assistance between both the Job Center and the local General Assistance office.

(Effective March 30, 1993)

Sec. 31-3s-3. Change in status; continuing eligibility

(a) **Notification by participant of change in status.** Whenever a program participant notifies the Job Center that there has been a change in circumstances and the program participant and/or the Job Center believes that he is no longer employable and/or job ready, the Job Center may refer the individual back to the local General Assistance office for a re-evaluation of employability status and/or the Job Center may re-evaluate the individual as to his job ready status.

(b) **Notification by General Assistance office of possible change in status.** Whenever a local General Assistance office makes a determination or obtains information which effects a change in the participant's status, the local General Assistance office shall notify the Job Center of such change in status.

(c) **Notification by Job Center of possible change in status.** Whenever a Job Center obtains information which could lead to a determination that a program participant: (1) has failed to accept an offer of employment without just cause, or (2) has accepted employment and subsequently quit his job voluntarily and without sufficient cause, or (3) has been discharged for cause as set forth in subparagraph (B) of subdivision (2) of subsection (a) of section 31-236 of the general statutes, the Job Center shall notify the referring local General Assistance office of such information. Determination of eligibility or ineligibility for General Assistance benefits as a result of one of the foregoing circumstances shall be the sole responsibility of the local General Assistance office.

(Effective March 30, 1993)

Sec. 31-3s-4. Employer eligibility

In determining the eligibility of any employer to receive a subsidy, under this program, the Commissioner may consider any or all of the following factors:

(a) The number of participants the employer is willing to hire;

(b) The characteristics of employment offered to the participant(s), including:

(1) whether the employment will enhance the skills of the participant;

(2) the extent to which the offered employment will afford the participant a systematic program of customized job training;

(3) the likelihood of job retention for the participant after the term of the subsidy has expired;

(4) the range of benefits, if any, offered to the participant;

(c) The employer's record of compliance with state and federal labor laws;

(d) The ability of the Job Center to match the particular participant pool to the particular employment available; and

(e) Program fund availability.

(Effective March 30, 1993)

Sec. 31-3s-5. Program administration and subsidies

(a) **Employer subsidy.** Any employer providing subsidized employment under this

program may receive a subsidy of fifty (50) percent of the starting hourly rate of pay (up to a maximum starting rate of pay of sixteen (16) dollars per hour) for a term of six (6) months for each participant hired by the employer.

(b) **Nonprofit additional subsidy.** In addition to the subsidy provided in subsection (a), a nonprofit employer may apply for and receive a subsidy not to exceed fifty (50) percent of the participant's starting rate of pay (up to a maximum starting rate of pay of sixteen (16) dollars per hour) for an additional term of six (6) months for each participant hired by the employer, provided the employer has adequately demonstrated to the Commissioner good faith efforts which are likely to secure permanent funding for the participant's position.

(c) **Direct pay to participant after eight (8) successive weeks of full-time employment.** In the discretion of the Commissioner, the participant may receive direct payment of two hundred (200) dollars, if the participant finds his own full-time unsubsidized employment without the aid of direct referral to an employer by the Job Center and remains in such employment for a period of eight (8) successive weeks.

(d) **Direct pay to participant after twenty-six (26) successive weeks of full-time employment.** In the discretion of the Commissioner, the participant may receive direct payment of an additional three hundred (300) dollars, if the participant finds his own full-time unsubsidized employment without the aid of direct referral to an employer by the Job Center and remains in such employment for a period of twenty-six (26) successive weeks.

(e) **Work incidentals**.

(1) In the discretion of the Commissioner, funds may be expended by the Job Center for work incidentals where the Job Center determines such expenditure(s) is/are necessary to enable a participant to obtain a job.

(2) The Commissioner may periodically establish a maximum payment per participant for work incidentals, based upon availability of funds.

(f) **Ancillary services**.

(1) In the discretion of the Commissioner, funding may be expended for those ancillary services deemed necessary to facilitate program participation by individual participants.

(2) The Commissioner may periodically establish a maximum expenditure per participant or participant group for such expenditures, based upon availability of funds.

(g) **Direct grant to employers for disability related accommodations.** In his discretion, the Commissioner may make available certain funds to be allocated as direct grants to employers who assume extraordinary costs, i.e. beyond the reasonable accommodation required by law, in adapting or renovating a work site to accommodate a program participant who is disabled. The decision to make a grant and the size of such grant shall be solely within the discretion of the Commissioner.

(Effective March 30, 1993)

Sec. 31-3s-6. Eligibility for other job center services

In addition to the services provided to a participant in this program, a participant referred to a Job Center will have access to all other appropriate Job Center services, to the extent

resources are available to provide such services, including but not limited to job referrals, counseling, automated job matching services, job development, federal bonding, employment search workshops and aptitude testing.

(Effective March 30, 1993)

Sec. 31-3s-7. Collective bargaining concurrence

Program participation by an employer who is a party to a collective bargaining agreement and who is seeking to employ one or more participants who will be employed in work subject to the collective bargaining agreement shall be conditioned upon the written concurrence of the labor organization which is a party to the collective bargaining agreement.

(Effective March 30, 1993)

Sec. 31-3s-8. Discretionary funds for innovation

If, at any point, the Commissioner (1) determines that the program goal of providing employment which will enhance the skills of participants while affording the prospect of long-term job retention is not being adequately achieved, either statewide or within a given region, or (2) identifies an opportunity for subsidized employment which is demonstrably more favorable than other subsidized employment approved under these regulations, then the Commissioner may authorize the use of additional available funds to increase subsidy amounts and/or create innovative incentives for such employment. Such authorization of funds, increase in subsidy amounts, and/or approval of incentive innovations shall be solely within the discretion of the Commissioner.

(Effective March 30, 1993)

Agency
Department of Labor

Subject
Dislocation Allowance and Reemployment Assistance Program

Inclusive Sections
§§ 31-11a-1—31-11a-17

CONTENTS

Dislocation Allowance and Reemployment Assistance for Loss of Employment Caused by Litter Control Statutes Sections 22a-77 Through 22a-79

General

Dislocation Allowances

Reemployment Assistance

Administration

Dislocation Allowance and Reemployment Assistance Program

Dislocation Allowance and Reemployment Assistance for Loss of Employment Caused by Litter Control Statutes Sections 22a-77 Through 22a-79

General

Sec. 31-11a-1. Purpose and scope

The following regulations implement and facilitate the administration of sections 8 and 9 of Public Act 78-16, now codified as section 31-11a of the Connecticut General Statutes.

That statute authorizes the labor commissioner to provide for payment of dislocation allowances and other assistance in securing suitable employment to individuals whose loss of employment is directly related to sections 22a-77 through 22a-79 of the Connecticut General Statutes (Litter Control and Beverage Container Law).

(Effective August 18, 1980)

Sec. 31-11a-2. Definitions

(a) "Administrator" means the Labor Commissioner or any duly authorized representative.

(b) "Adversely affected employment" means employment, the loss of which has been caused by or is directly related to sections 22a-77 through 22a-79 of the Connecticut General Statutes.

(c) "Amount of unemployment compensation" means an individual's total unemployment rate, as defined in section 31-231a, and includes any dependency allowances, as defined in section 31-234 of the Connecticut General Statutes.

(d) "Average weekly earnings" means one-thirteenth of an individual's high quarter gross wages. The high quarter is the quarter in which the individual's wages were highest among the four quarter base period used in determining the individual's amount of unemployment compensation.

(e) "Average weekly net earnings" means one thirteenth of an individual's net earnings during the high quarter, which is utilized in determining the individual's amount of unemployment compensation.

(f) "Base period" means those quarters of earnings used in determining an individual's total unemployment benefit rate, as defined in section 31-230 of the Connecticut General Statutes.

(g) "Benefit period" means a two-year period commencing with an individual's date of loss of employment because of sections 22a-77 through 22a-79 of the Connecticut General Statutes, or January 1, 1980, whichever is later.

(h) "Date of separation" means the date on which the individual was laid off or otherwise separated from employment, so as to make the individual a dislocated employee.

(i) "Dislocated employee" means any person who suffers loss of employment directly related to, or caused by, the provisions of sections 22a-77 through 22a-79 of the Connecticut

General Statutes.

(j) "Dislocation allowance" means a weekly allowance payable to a dislocated employee under sections 31-11a-3 through 31-11a-8 of these regulations.

(k) "Employer" means any individual or type of organization subject to the provisions of Chapter 567 of the Connecticut General Statutes.

(*l*) "Employment" means any service performed legally for an employer by an individual for wages.

(m) "Net earnings" means gross wages less reductions for federal withholding tax and the FICA tax.

(n) "Reemployment assistance" means retraining and relocation allowances, employment assistance, and educational training programs.

(o) "Trainee" means a dislocated employee undergoing a planned and systematic sequence of instruction to which the individual is referred under sections 31-11a-9 through 31-11a-13 of these regulations.

(p) "Unemployment Compensation" means cash benefits payable to an individual with respect to an individual's unemployment under Chapter 567 of General Statutes.

(q) "Wages" means "total wages" as defined in section 31-222 (b) (1) of the Connecticut General Statutes.

(r) "Week" means a week as defined under section 31-222-13 of the Connecticut Unemployment Compensation Regulations.

(Effective August 18, 1980)

Dislocation Allowances

Sec. 31-11a-3. Applications

Any individual may apply at any time within his benefit period to the administrator for a dislocation allowance. Applications shall be in accordance with instructions and on forms approved and provided by the administrator. Determinations with respect to an application shall be made by the administrator as soon as administratively feasible, in accordance with the provisions of section 31-11a-4 of these regulations.

(Effective August 18, 1980)

Sec. 31-11a-4. Qualifying requirements

To qualify for a dislocation allowance, an individual must meet each of the following requirements:

(a) The individual must be a dislocated employee.

(b) The individual must meet the minimum requirements for receiving unemployment compensation under Chapter 567 of the Connecticut General Statutes for any week ending after January 1, 1980.

(Effective August 18, 1980)

Sec. 31-11a-5. Evidence of qualification

(a) **Agency action.** When an individual applies for a dislocation allowance, the agency shall obtain information necessary to establish:

(1) Whether the individual meets the requirements of section 31-11a-4.

(2) The individual's average weekly earnings.

(3) The individual's average weekly net earnings.

(b) **Insufficient data.** If information necessary to establish entitlement, specified in paragraph (a) of this section, is not obtainable from state agency records or from an employer, the administrator may require the individual to submit an affidavit or other acceptable evidence. Such affidavit or statement shall contain, but not be limited to the following information:

(1) Name and address of the employer.

(2) Beginning and ending dates of period of employment with such employer.

(3) Reason for unemployment.

(4) Any other pertinent information.

(c) **Verification.** Evidence submitted pursuant to paragraph (b) of this section shall be certified by the individual to be true to the best of the individual's knowledge and belief. The administrator may require the individual to produce supporting evidence such as Forms W-2, paycheck stubs, union records, income tax returns, statements of fellow employees or other individuals who would be knowledgeable of such information.

(d) **Determinations.** The administrator shall make the necessary determinations on the basis of information obtained from the employer, the employee or any other relevant source. When any change occurs in an individual's benefit year and base period, as defined in section 31-230 of the Connecticut General Statutes, during the individual's benefit period for dislocation allowance, the administrator shall recompute that individual's dislocation allowance based on such change.

(e) **Records and reports.** The administrator may require from any employer sworn or unsworn reports with respect to persons employed or formerly employed by that employer which are necessary for the determination of eligibility to benefits under section 31-11a of the Connecticut General Statutes. The administrator may also require that said employer shall open any records of employment with respect to former or present employees for inspection and copying at any reasonable time, as often as deemed necessary for the effective administration of section 31-11a of the Connecticut General Statutes.

(Effective August 18, 1980)

Sec. 31-11a-6. Disqualifications

(a) **State law applies.** Except as stated in paragraph (b) of this section, an individual shall not be paid a dislocation allowance for a week of unemployment for which the individual is disqualified from receiving unemployment compensation under Chapter 567 of the Connecticut General Statutes.

(b) **Exception for trainees.** State law shall not be applied to disqualify an individual

undergoing training approved under the Reemployment Assistance provisions of these regulations.

(c) **Overpayments.** Provisions in Chapter 567 of the Connecticut General Statutes regarding establishment and recovery of overpayments for fraudulent and nonfraudulent filing shall apply to any individual filing for a dislocation allowance.

(Effective August 18, 1980)

Sec. 31-11a-7. Weekly amounts

(a) **Regular allowance.** The amount of dislocation allowance payable to a dislocated employee for a week of unemployment (including a week of training) shall be equal to 75 percent of his average weekly earnings, except that the amount payable shall in no event exceed 85 percent of the dislocated employee's average net weekly earnings.

(b) **Reduction of amount.** The amount of dislocation allowance payable under paragraph (a) of this section shall be reduced by the amount of unemployment compensation received by the dislocated employee, except that when an individual's unemployment compensation payment for a week is reduced to zero, due to wages earned for partial employment or for any other reason pursuant to state law, no dislocation allowance shall be paid for that week.

(c) **Training allowance.** Any dislocated employee enrolled in a training program approved under the Reemployment Assistance provisions of these regulations, who is entitled for a week to dislocation allowance shall receive such dislocation allowance in an amount reduced by any training allowance or unemployment compensation or any combination of both to which that individual is entitled under any other state or federal law.

(d) **Rounding.** An amount payable under this section which is not a multiple of a dollar shall be rounded to the next higher multiple of a dollar.

(Effective August 18, 1980)

Sec. 31-11a-8. Duration

An individual may receive a dislocation allowance for any calendar week for which the individual qualifies during the two years subsequent to the date he became unemployed as a result of the provisions of sections 22a-77 through 22a-79 of the Connecticut General Statutes.

(Effective August 18, 1980)

Reemployment Assistance

Sec. 31-11a-9. Training and employability services

(a) A dislocated employee shall be afforded by the administrator all forms of reemployment assistance to which he is entitled under law. The dislocated employee shall be:

(1) Registered for work with the Job Service of the Connecticut Labor Department.

(2) Afforded, when appropriate, testing, counseling, job referral and other placement services provided by any law, including supportive services in order to prepare the worker for full employment in accordance with the worker's capabilities and job opportunities.

(b) If suitable employment is not otherwise available and the worker's employability would be improved thereby, the dislocated employee may be selected or referred to training as provided in sections 31-11a-10, 11, 12 and 13.

(c) **Applications:** Applications for selection for, approval of and referral to training shall be in accordance with instructions and on forms approved and provided by the administrator, and authorization for such training must be made within the two-year benefit period.

(Effective August 18, 1980)

Sec. 31-11a-10. Worker retraining

(a) **Plan development.** To the extent practicable before referring dislocated employees to training or approving training for such individuals, the administrator shall consult with such worker's former employer or recognized union for the purpose of developing a worker retraining plan to meet the manpower needs of such employer.

(b) **Selection and referral.** To the extent consistent with this section, selection and referral of individuals designated in a worker retraining plan shall be in accordance with section 31-11a-11.

(Effective August 18, 1980)

Sec. 31-11a-11. Preferred training

(a) **No cost training.** The administrator shall, whenever possible, refer a dislocated employee to suitable training which is provided at no cost to the individual or to the Employee Dislocation Allowance Fund.

(b) **Applicable standards.** The standards, procedures and requirements of the training program to which an individual is referred under this section shall apply to the individual.

(c) **Fees prohibited.** In no case shall an individual be referred to training under this section for which the individual is required to pay a fee or tuition.

(Effective August 18, 1980)

Sec. 31-11a-12. Purchased training

If the administrator determines that placement of a dislocated employee in no cost training under section 31-11a-11 cannot otherwise be accomplished, the administrator may arrange or contract to reimburse the operator of the training program for the cost of such training.

(Effective August 18, 1980)

Sec. 31-11a-13. Approval of other training

The administrator may approve and purchase with Employee Dislocation Allowance Fund monies any other suitable training providing:

(a) Circumstances preclude referral to training under sections 31-11a-11 and 31-11a-12

and

(b) If institutional vocational training, the training has been approved by the State Board of Education, and is maintained by an approved facility or by the administrator.

(Effective August 18, 1980)

Administration

Sec. 31-11a-14. Determinations

(a) The administrator shall apply these regulations and the substantive provisions of the General Statutes in the determination of an individual's entitlement to dislocation allowance or reemployment assistance. As to matters not otherwise specifically provided for in these regulations or section 31-11a of the Connecticut General Statutes, the administrator shall follow the applicable provisions of the Connecticut Unemployment Compensation Law and Regulations, including any procedural requirements of that law or its regulations, except where inconsistent with these regulations or section 31-11a of the Connecticut General Statutes.

(b) **Redeterminations.** A determination under paragraph (a) of this section may be reconsidered by the administrator under the same terms and conditions as a determination on a claim for unemployment compensation under Chapter 567 of the Connecticut General Statutes

(c) **Written notification.** The administrator shall notify the individual in writing of any determination or redetermination as to entitlement to dislocation allowance or reemployment assistance. Each determination or redetermination shall inform the individual of the right to reconsideration or appeal in the manner provided for in section 31-11a-15.

(Effective August 18, 1980)

Sec. 31-11a-15. Appeals

(a) **Written appeal.** An individual may appeal any determination or redetermination by the administrator by submitting a written request for review and reconsideration of such determination or redetermination within fourteen days of the mailing date of said decision.

(b) **Hearings.** A hearing officer, designated by the administrator shall rule on any appeal under paragraph (a) of this section in the same manner and to the same extent as provided for determination in section 31-11a-14(a).

(c) **Judicial review.** Any decision made under paragraph (b) of this section shall be subject to all applicable provisions of Chapter 54 of the General Statutes of the State of Connecticut.

(Effective August 18, 1980)

Sec. 31-11a-16. Disclosure of information

Any information obtained by the administrator relating to an application for, entitlement to or payment of any dislocation allowance or reemployment assistance to an individual

shall be confidential to the extent provided for in all applicable laws.

(Effective August 18, 1980)

Sec. 31-11a-17. Unemployment compensation

Unemployment Compensation payable to a dislocated employee shall not be denied or reduced for any week by reason of receipt of, or any right to receive a dislocation allowance or reemployment assistance under these regulations.

(Effective August 18, 1980)

Agency
Department of Labor

Subject
Employment of Women Between 1 a.m. And 6 a.m.

Inclusive Sections
§§ 31-19-1—31-19-4

CONTENTS

Employment of Women Between 1 a.m. And 6 a.m.

Sec. 31-19-1. Health requirements (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-19-2. Women not to work alone (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-19-3. Inspection (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-19-4. Transportation (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Agency
Department of Labor

Subject
Employment of Minors

Section
§ 31-23-1

CONTENTS

Employment of Minors

Sec. 31-23-1. Employment of Minors

The employment of minors under 18 years of age in the following industries which are declared hazardous by the Connecticut State Labor Department, is prohibited, unless an investigation by a representative of the Division of Factory Inspection discloses that either a specific operation of a particular occupation or the conditions under which a particular occupation is performed are not unduly hazardous and the employer has received written approval of such specific operation or employment conditions from the State Labor Department.

* This job not prohibited for minors.

Automotive Maintenance and Repair

* Island Work

* Changing Passenger Car Tires (No Truck Tires) (No Working Under Cars Or In Pits)

* Use of Air Hand Tools

* Properly Grounded Electrical Hand Tools (No Drill Over ¼″ Diameter)

* General Cleaning Including Yard Work (No Riding Reel Mowers)

* Brush Painting and Window Cleaning using not more than 6 foot stepladder.

* Preparing Cars for Spray Painting (No Spray Painting) (No Welding) Only Masking and Sanding

* Cleaning and Washing of Motor Vehicles (No Flammable Liquids)

* Driving Limited up to ¾ Ton Truck

* Clerical Work

* Shipping and Stock Clerk

* Bench Work

Beverage Bottling

Brick Manufacturing (Excluding Land Turning)

Cement Manufacturing

Chemicals Manufacturing

Clay Products and Tile

Coke and Tar Products Manufacturing

Concrete Products and Cinder Block Manufacturing

Construction

* Landscaping (Planting Shrubs, Small Trees etc.)

* General Yardwork (No Riding Reel Mowers)

* Driving Limited up to ¾ Ton Truck (No Fork Lift Trucks) (No Construction Equipment) (Riding in Cabs of Trucks Only)
* Properly Grounded Electrical Land Tools (No Saws) (No Drill Over ¼ inch Diameter)
* Brush Painting and Window Cleaning using not more than a 6 foot stepladder.
* General Cleaning * Changing of Passenger Car Tires (No Truck Tires)
* Use of Air Hand Tools
* Cleaning and Washing of Cars and Trucks (No Flammable Liquids)
* Clerical Work
* Shipping and Stock Clerk

Dry Cleaning; Machine Operation

Experimental Testing or Control Laboratories

Explosives and Fireworks Manufacturing

Fertilizer Manufacturing

Food Products—Processing

Grain and Feed Processing

Ice Manufacturing

Laundering, Machinery Operation

Leather Products Manufacturing

Logging and Lumber Manufacturing and Operations in any Saw Mill, Shingle Mill and Cooperage Stock Mill

Meat Products Manufacturing

Mining (Underground and Surface)

Paint and Varnish Manufacturing

Paper and Paperboard Manufacturing

Paper Products Manufacturing

Pharmaceutical Manufacturing

Plastic and Plastic Products Manufacture

Power Driven Woodworking Machines

Printing

Rayon Manufacturing

Rubber Products Manufacturing

Scrap Metal Salvaging

Sewing Machine Operations using needles over $^{1}/_{16}$ inch Diameter

Smelting, Rolling, Casting and Processing of Metals

Stone Cutting and Processing
Storage Battery Manufacturing
Synthetic Rubber Manufacturing
Tanning
Textile Machinery Operation
Tire Recapping, Vulcanizing and Manufacturing
Wrecking and Demolition

The provisions of this section shall not apply to work study programs, apprentices in bona fide apprenticeship courses, office workers and those not directly a part of, or in contact with production operations unless the occupations, as such, have been declared hazardous.

Light bench work or assembly, where the operations performed do not require the use of power driven tools, (except screw drivers, wrenches, etc.) shall be considered non-hazardous provided they do not involve the use of or exposure to corrosives, flammable, toxic materials or electrical current in excess of 110 volts and 15 amperes.

The following occupations, in all industries, are declared hazardous and such employment of minors under 18 years of age is prohibited, unless an investigation by a representative of the Division of Factory Inspection discloses that the conditions under which the occupation is performed are not unduly hazardous and the employer has received written approval of such employment conditions from the State Labor Department.

Abrasive Wheel Operation
Bakery Machine Operation
Baler Operator or Helper
Boiler or Engine Room Occupation
Brazing
Centrifugal Machine Operators (Including Whizzers and Extractors)
Cranes, Derricks, Hoists, Occupations involving the use of:
Electrical Circuits, Tools or Equipment, involving the use of (Excluding double insulated tools)
Electrical Equipment, Installation, Maintenance and Repair
Electrical Testing
Elevator Operation (Except an Unattended Automatic Passenger Elevator) Repair or Maintenance of Power Driven Hoisting Apparatus
Flame Cutting
Flammable, Toxic or Corrosive Materials; Exposure to Fork Lift or Tiering Truck Operator
Glazing and Glass Cutting
Hair and Fur Processing
Heat Treater or Helper
Ladder, Occupation Involving Climbing or Working on Metal Working Machinery, Fixed

or Portable, Operation of Oiler Machinery
Power Driven Machinery, Use of Portable
Powder Actuated Hand Tools
Presses (Foot, Hand or Power) Operation of Air, Oil, Water, Electric, Belt Driven or Spring Actuated Metal Forming, Punching and Shearing Machines
Press Brakes (Excluding Hand Brakes under 24 inches)
Pressure Testing
Radioactive Substance and Ionization Radiation; Exposure to Riveting, Grommeting or Eyeletting Operation
Rolls, Operation of Power Driven
Sand Blast Operator
Shear, Operator (Hand, Foot, Power)
Soldering (Exception by Investigation)
Spray Painting or Dipping
Stranding Machine Operator
Tumbler Operator
Vehicle Driver or Helper (Excluding ¾ Ton or less)
Welding
Woodworking Machinery, Fixed or Portable, Operation or Helper

The provisions of this section shall not apply to work study programs, apprentices in bona fide apprenticeship courses, office workers and those not directly a part of, or in contact with production operations.

(Effective November 15, 1976)

Agency

Department of Labor

Subject

Sanitary Facilities In Connecticut Establishments

Inclusive Sections

§§ 31-37-1—31-37-14

CONTENTS

Sanitary Facilities In Connecticut Establishments

Sec. 31-37-1. Definitions (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-2. Water supply and drinking facilities (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-3. General toilet accommodations (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-4. Washing facilities (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-5. Toilet facilities (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-6. Privacy (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-7. Construction (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-8. Fixtures (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-9. Ventilation (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-10. Heating (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-11. Lighting (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-12. Urinals (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-13. Privies (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-37-14. Maintenance (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Agency

Department of Labor

Subject

Sanitary, Lighting and Heating Facilities for Employees of Railroad Companies as Defined in Section 16-1 of the General Statutes

Inclusive Sections

§§ 31-38a-1—31-38a-15

CONTENTS

Sanitary, Lighting and Heating Facilities for Employees of Railroad Companies as Defined in Section 16-1 of the General Statutes

Sec. 31-38a-1. Definitions

(a) "Potable water" means pure clean water suitable for drinking or for washing purposes.

(b) Dressing room is an enclosed space used by employees for changing and hanging up work clothes and street clothes. A dressing room should adjoin a washroom or be provided with washing fixtures and facilities conveniently located.

(c) Restroom for women is an enclosed room provided with at least one cot or couch. A dressing room suitably equipped with a cot or couch is a restroom within the meaning of this definition.

(d) Washroom is an enclosed room containing washroom fixtures and facilities.

(e) Lavatory is any place, enclosed or not, where washing fixtures and facilities are located.

(f) Washbasin or washbowl is an individual basin or bowl made of sanitary pottery or other noncorroding material, equipped with a faucet for hot water and a faucet for cold water or a single faucet supplying water of a temperature suitable for washing. Each such basin shall have an outlet with a suitable stopper.

(g) Washing sink or washing trough is a trough made of sanitary pottery or other noncorroding material, equipped with hot and cold water faucets or tempered water faucets.

(h) Toilet room is an enclosed room containing toilet bowls with seats or toilet compartments and/or urinals.

(i) Toilet or water-closet compartment is an enclosure enclosing a single water closet.

(j) Water closet is an individual toilet bowl (with seat) connected with a sewer and having means for flushing each toilet bowl separately.

(k) Semiflush toilet consists of one or more toilet bowls or a toilet trough connected with a sewer and flushed automatically at intervals.

(*l*) A urinal is a toilet fixture connected with a sewer which is used for the sole purpose of urination.

(m) Latrine is a toilet facility, with or without toilet seats, over a trench, pit or stream used for defecation or urination.

(n) Chemical closet is a toilet facility in which the waste matter falls into a trench, pit, vault or other container and is treated with lime or a chemical disinfectant and deodorant to render the contents inoffensive and harmless to health.

(o) Privy is a structure enclosing a latrine or chemical closet.

(p) Sewer is a soil pipe carrying waste water or sewage to a sewer main, septic tank, filter bed or into a stream.

Sec. 31-38a-2. Water supply and drinking facilities

(a) Every railroad company in each place of employment shall provide an adequate supply of clean wholesome water at conveniently accessible locations for drinking and washing purposes.

(b) All drinking and washing water shall be supplied from a source or sources approved by the health authorities having jurisdiction. Water which may be subjected to contamination shall be treated and purified before being supplied to employees for drinking or washing purposes.

(c) Drinking water should be cooled during hot weather. Ice used to cool drinking water shall not come in direct contact with the water.

(d) No railroad company shall supply drinking water for employees in pails or other open vessels, whether fitted with covers or not, from which the water must be dipped or poured. Drinking water containers shall be bottles or other closed vessels which protect the water from dust, dirt and contamination.

(e) The common drinking jug, bottle, cup or dipper is prohibited.

(f) Individual drinking cups, when furnished, shall be supplied in containers to protect the cups from being soiled, contaminated or wasted.

(g) Sanitary drinking fountains or bubblers, when furnished, shall be of a type approved by health authorities.

Sec. 31-38a-3. General toilet accommodations

(a) Every railroad company in each place of employment employing ten or more females shall provide at least one suitably equipped restroom. Such restroom may be located in a dressing room.

(b) Every railroad company in each place of employment in which it is necessary or desirable that employees change their clothing at the beginning and the ending of work should provide and maintain for each sex a clean hygienic dressing room with ample space for each individual to hang his or her street and work clothes so that such clothing will not come in contact with the clothing of any other employee.

(c) An individual locker for each employee shall be provided by every railroad company in each place of employment where dirty, greasy, dusty, poisonous or other deleterious materials or products are handled. Each locker should be of such height, width and depth as to permit garments to hang without folding or rolling up. The door and sides should be perforated or openwork to provide ample ventilation.

(d) Each locker should be made of noncorroding material to prevent damage from rust or dampness.

(e) A suitable washroom or lavatory for the use of employees shall be provided by every railroad company in each place of employment. Such washroom or lavatory may be a part of the dressing room.

(f) Every restroom, dressing room and toilet room shall have outside windows to provide ample light and air. When necessary, ventilating fans shall be installed and operated to provide free circulation and change of air.

(g) Restrooms, dressing rooms, washrooms and washing fixtures and facilities shall be maintained in good working order at all times. Broken, damaged or impaired fixtures and facilities shall be repaired, restored or replaced as quickly as possible.

(h) Each washroom, toilet room and toilet compartment shall be painted white or other

light color, or white-washed once a year or oftener to insure greater cleanliness and better hygienic requirements.

(i) Ample supplies of toilet paper in suitable sanitary rolls or containers, soap in sanitary containers and towels suitably protected against soiling or contamination before use shall be provided without charge by every railroad company in each place of employment.

Sec. 31-38a-4. Washing facilities

(a) All water supplied by any railroad company in each place of employment for washing purposes shall be potable water.

(b) Every railroad company in each place of employment shall furnish for each sex at least one standard washbasin or its equivalent for every twenty such employees, or fractional part thereof, up to one hundred. Beyond one hundred the ratio may be one basin or equivalent to each twenty-five employees of either sex, or fractional part thereof.

(c) If washing sinks or troughs are furnished, each two and one-half feet of trough or sink equipped with a hot-water and a cold-water faucet or a single faucet carrying tempered water may be counted equal to one basin. Where washing fountains are furnished, two and one-half feet of the circumference of such fountain shall be equivalent to one washbasin.

(d) Washing sinks or troughs equipped to be filled with water and used as a common washing trough should be replaced by standard washing basins or washing troughs as soon as practicable.

(e) Washbasins, bowls, sinks or troughs should be made of sanitary pottery or other noncorroding materials. Wooden or unprotected metal basins, troughs or sinks are condemned.

Sec. 31-38a-5. Toilet facilities

(a) **Water closets required; sex designation.** Separate water-closet compartments or toilet rooms shall be provided for each sex by every railroad company in each place of employment where both males and females are employed. Such water closets shall be designated for the use of males and females and clearly marked “Men” or “Women” at the entrance of the toilet room or of the water-closet compartment if not located in a toilet room.

(b) **Number.** Water or toilet closets shall be provided for each sex at the rate of one closet to twenty persons or fraction thereof, up to one hundred, and thereafter at the rate of one closet for every twenty-five persons.

(c) **Location.** Such closets and urinals shall be readily accessible to the persons for whose use they are designed. In no case may a closet be located more than three hundred feet distant from the regular place of work of the persons for whose use it is designed, except where service elevators, accessible to the employees, are provided.

Sec. 31-38a-6. Privacy

(a) **Installations existing on February 7, 1961.** (1) The entrance door to every water-closet compartment or toilet room existing on February 7, 1961, which opens directly into a workroom shall be screened from view by a vestibule or a stationary screen, extending to

a height of not less than six feet, and of sufficient width to prevent a view of the interior of the water-closet compartment or toilet room. (2) Where such water closets for males and females are in adjoining compartments or toilet rooms and the entrance doors are within ten feet or less of each other, a stationary screen not less than six feet high and either T or L shape shall be built between and in front of the doors. (3) Every partition separating a water-closet compartment provided for males from a compartment provided for females shall extend from the floor to the ceiling and there shall be no direct connection between the compartments either by doors or by other opening. (4) No water closet or urinal compartment may be maintained in connection with rooms in which food products are manufactured or in which unwrapped food products are packed or sold, unless such compartment is separated from such rooms by a ventilated vestibule with door. The compartment and vestibule doors shall be provided with self-closing devices. During the period between May first and November first, all windows in toilet rooms, water closets and urinal compartments provided for such workrooms shall have wire screens, not coarser than fourteen mesh wire, and such screens shall be kept in good repair.

(b) **New installations.** (1) Every water-closet compartment installed after February 7, 1961, shall be located in a toilet room, or shall be built with a vestibule and door to screen the interior from view. (2) The door of every toilet room and of every water-closet compartment, which is not located in a toilet room, shall be fitted with an effective self-closing device to keep it closed. (3) Where the water closets for males and females are in adjoining compartments, there shall be solid plaster or metal-covered partitions between the compartments, extending from the floor to the ceiling.

Sec. 31-38a-7. Construction

(a) **Installations existing on February 7, 1961.** (1) The outside partitions of every toilet room and of every water-closet compartment not located in a toilet room shall be of solid construction and shall extend to the ceiling or the area shall be independently sealed over. Above the level of six feet the outside walls of a toilet room may be provided with glass that is translucent but not transparent. Windows when open shall be screened if necessary to prevent a view of the interior from surrounding buildings. (2) Unless constructed of marble, cement, plaster, tile, galvanized iron, glazed brick or other glazed materials or concrete with a mixture of waterproofing material, every toilet room and water-closet compartment, including the ceiling, shall be kept well painted with a light colored nonabsorbent paint, varnish or other substance impervious to water. (3) Where more than one water closet is installed in a toilet room, partitions between the water closets shall be provided which shall approximate as nearly as possible the dimensions prescribed in subdivision (2) of subsection (b) hereof.

(b) **Installations after February 7, 1961.** (1) The floor of every toilet room installed after February 1, 1961, and the side walls to a height of not less than six inches shall be constructed with sanitary base and of material other than wood, which is impervious to moisture and which has a smooth surface. This material shall be marble, Portland cement, tile, glazed brick or other approved waterproof material. The angle formed by the floor and

the base shall be rounded. (2) Every water-closet compartment installed after said date, except the door, shall be constructed to a height of not less than four feet of material which is nonabsorbent to moisture and has a smooth surface. Where more than one water closet is installed in a toilet room, partitions between the water closets shall be provided and shall extend forward not less than fifteen inches further than the fixture. These may be of wood if covered with paint, or some other nonabsorbent material. They shall be not less than six feet in height and shall not extend nearer the ceiling or floor than one foot. They shall be at least twenty-eight inches apart. (3) In all water-closet compartments constructed after said date, there shall be at least ten square feet of floor space and eighty cubic feet of air space per urinal or stool installed.

Sec. 31-38a-8. Fixtures

(a) Every water closet installed after February 7, 1961, shall have a rim flush bowl made of vitreous china or of other approved material. Every such bowl shall be set entirely free and open from all enclosing woodwork, and shall be so installed that the space behind and below may be easily cleaned.

(b) Every water closet installed after said date shall have the seat made of nonheat-absorbing material, which shall be impervious to moisture.

(c) All fixtures together with sewer, soil and waste pipes shall be trapped and vented in an approved manner.

Sec. 31-38a-9. Ventilation

(a) **Installations existing on February 7, 1961.** In places of employment existing on February 7, 1961, every toilet room or every water closet or urinal compartment shall be ventilated to the outdoor air by window, skylight or ventilating duct.

(b) **Installations after February 7, 1961.** Every toilet room or water closet or urinal compartment installed after February 7, 1961, shall have a window opening to the outer air, which shall be kept open, except where necessity requires the installation of such water closet or urinal compartment in a basement, in which case a ventilating duct shall be provided.

Sec. 31-38a-10. Heating

Every toilet room and water-closet compartment shall be kept heated during working hours to not less than 68°F. from November first to April first. Heating facilities installed after February 7, 1961, shall be so arranged as to permit thorough cleaning of floors and walls.

Sec. 31-38a-11. Lighting

Every toilet room or water-closet compartment shall be so illuminated that all parts of the room and compartment are easily visible at all times during working hours. If daylight is not sufficient for this purpose, artificial illumination shall be maintained. The approaches of all water closets and privies shall be kept well lighted and free from obstacles.

Sec. 31-38a-12. Urinals

(a) One urinal shall be installed by every railroad company in each place of employment employing ten or more male employees for every forty males or fractional part thereof up to two hundred and thereafter one additional urinal for every sixty males or fractional part thereof. Two feet of an approved trough urinal shall be equivalent to one individual urinal.

(b) Every urinal installed after February 7, 1961, shall be made of material that is impervious to moisture. Cast iron, galvanized iron, sheet metal or steel urinals are prohibited unless coated with vitreous enamel. Where slate is used, it shall be of first quality.

(c) Individual urinal stalls shall be provided with sides to give privacy. The sides and base of every urinal stall shall be made of material which is impervious to moisture and which has a smooth surface. The use of trough urinals in installations after February 7, 1961, is prohibited.

(d) Wherever urinals are installed after February 7, 1961, the floors in front for a distance of at least twenty-four inches shall slope to the drain.

Sec. 31-38a-13. Privies

(a) Privy vaults will be prohibited until after it has been shown to the satisfaction of the labor commissioner that their use is unavoidable.

(b) Every privy vault shall be water-tight and fly-proof, and the walls shall extend not less than twelve inches above the surface of the ground.

(c) Every privy shall be ventilated by unobstructed opening to the outdoor air other than the door, and every privy shall have a self-closing door. Every window and ventilating opening of a privy shall be provided with fly-screens.

(d) Every privy shall be kept clean and the contents of the vault shall be emptied, chemically treated or incinerated at frequent intervals. Dry sand, dry fine earth or lime shall be provided in a receptacle and used at frequent intervals to deodorize the contents of the vault.

(e) All privies shall be separated for the two sexes, and marked “Men” and “Women” as required for toilet rooms, and shall be provided with partitions and individual seats.

(f) The entrance to every privy shall be screened by a vestibule or a stationary screen extending to a height of at least six feet and of sufficient width to prevent a view of the interior. Where privies for males and females are in adjoining compartments, there shall be a metal-covered partition between the compartments, extending from the floor to the roof.

(g) Latrines shall be replaced by standard water closets where practicable. Where water closets are not practicable, chemical closets shall be installed.

Sec. 31-38a-14. Maintenance

(a) All water-closet compartments and all toilet rooms and all wash and dressing rooms and all privies and the floors, walls, ceilings and surfaces thereof, and all fixtures therein, and all water closets and urinals, basins and sinks shall at all times be maintained in good order and repair and in a clean and sanitary condition.

(b) In each toilet room and privy an adequate supply of toilet paper in proper holders

shall be provided and it shall be of material which will not obstruct fixture or plumbing.

(c) The enclosure of all toilet rooms, dressing rooms or water-closet compartments and all fixtures shall be kept free from all indecent writing or marking and such defacement, when found, shall be at once removed by the employer.

Sec. 31-38a-15. Scope and application

Sections 31-38a-1 to 31-38a-14, inclusive, apply to sanitary facilities for railroad employees employed in, at or near depots, terminals, passenger yards, coach yards, freight yards, switching yards, garages, repair shops, warehouses, assembly points, headquarters and other facilities of such company located in this state.

Agency

Workers' Compensation Commission

Subject

Establishment and Administration of Safety and Health Committees at Work Sites

Inclusive Sections

§§ 31-40v-1—31-40v-11

CONTENTS

Establishment and Administration of Safety and Health Committees at Work Sites

Sec. 31-40v-1. Purpose and scope

Section 31-40v of the general statutes "Establishment of safety and health committees by certain employers" requires that every covered employer administer a safety and health committee to promote health and safety in places of employment in this state. The purpose of this regulation is to specify rules for establishing and administering committees which will bring employers and employees together in a non-adversarial, cooperative, and effective effort to promote safety and health at each work site.

(Adopted effective May 22, 1995)

Sec. 31-40v-2. Definitions

For the purpose of sections 31-40v-1 through 31-40v-11, inclusive:

(a) "Average incidence rate" means the average incidence rate of work-related injury and illness for all industries in this state as determined by the Department of Labor.

(b) "Chairman" means the chairman of the Connecticut Workers' Compensation Commission or his designated agent.

(c) "Employee" means a person engaged in service to an employer in a business of his employer.

(d) "Employer" means a person engaged in business who has employees, including the State of Connecticut and any political subdivision thereof.

(e) "Managerial member" means any individual who has the authority to use his judgment in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances or effectively to recommend such actions.

(Adopted effective May 22, 1995)

Sec. 31-40v-3. Establishment of committees

(a) Except as provided in subsection (e) of section 31-40v-4 and section 31-40v-10 of these regulations, each employer who has twenty-five or more employees at any single work site in this state, as well as each employer who has twenty-four or less employees in this state whose rate of work-related injury and illness exceeds the average incidence rate, shall establish and administer a safety and health committee for that work site.

(b) In determining employment levels under sections 31-40v-1 to 31-40v-11, inclusive, of these regulations, the employer shall count all regular employees excluding temporary and seasonal workers under the employer's direction and control.

(Adopted effective May 22, 1995)

Sec. 31-40v-4. Committee membership and composition

(a) The committee shall be composed of at least as many employee members as employer members. The number of employee members on the committee may be greater than the

number of employer members.

(b) The employer's non-managerial employees shall select employee safety and health members.

(c) Each committee shall have a chairperson elected by the committee members. Employer and employee members may have rotating responsibilities for chairing committee meetings.

(d) Reasonable efforts shall be made to ensure that committee members are representative of the major work activities at the work site.

(e) An employer need not provide a safety and health committee where the employees do not primarily report to or work at a fixed location and at work sites where less than 25 employees are employed. In such situations, a single centralized committee may represent the safety and health concerns of covered employees.

(Adopted effective May 22, 1995)

Sec. 31-40v-5. Frequency of meetings

The committee shall meet at least once every three months, but may meet more often should they so choose.

(Adopted effective May 22, 1995)

Sec. 31-40v-6. Recordkeeping

(a) The employer shall keep a roster containing the names and departments of all committee members. The names of current committee members shall be posted to ensure that all employees can readily contact committee members.

(b) The employer shall keep a record of attendance and minutes of meetings.

(c) All records regarding safety and health committees shall be provided to the chairman or his designee.

(d) The retention time for such records is three (3) years, after which said records may be purged.

(Adopted effective May 22, 1995)

Sec. 31-40v-7. Compensation

Any employee who participates in committee activities in his/her role as a committee member, including, but not limited to, attending meetings, training activities, and inspections, shall be paid at his/her regular rate of pay for all time spent on such activities.

(Adopted effective May 22, 1995)

Sec. 31-40v-8. Duties and functions

The committee's duties and responsibilities shall include, but not be limited to, establishing procedures for sharing ideas with the employer concerning:

(a) Safety inspections;

(b) Investigating safety incidents, accidents, illnesses and deaths;

(c) Evaluating accident and illness prevention programs;

(d) Establishing training programs for the identification and reduction of hazards in the workplace which damage the reproductive system of employees; and

(e) Establishing training programs to assist committee members in understanding and identifying the effects of employee substance abuse on workplace accidents and safety.

(Adopted effective May 22, 1995)

Sec. 31-40v-9. Training

All members of the committee shall be trained as committee members at no cost to the employees.

(Adopted effective May 22, 1995)

Sec. 31-40v-10. Pre-existing committees

Any employer who can establish that, prior to July 1, 1993, it had an existing safety and health program or other program determined by the chairman to be effective in the promotion of health and safety in the workplace may not be required to establish a safety and health committee pursuant to section 31-40v-3 of these regulations if such existing safety and health committee or program is in substantial compliance with the provisions of sections 31-40v-1 to 31-40v-11, inclusive, of these regulations.

(Adopted effective May 22, 1995)

Sec. 31-40v-11. Construction

A safety and health committee established under and operating in conformity with the provisions of sections 31-40v-1 to 31-40v-11, inclusive, of these regulations is intended to respect all rights of all employees, including those rights arising under the National Labor Relations Act and the Railway Labor Act, and a committee operating pursuant to the provisions of sections 31-40v-1 to 31-40v-11, inclusive, shall not be construed to constitute a labor organization within the meaning of section 2 (5) of the National Labor Relations Act or a representative within the meaning of section 1, sixth, of the Railway Labor Act.

(Adopted effective May 22, 1995)

Agency
Department of Labor

Subject
Construction Safety Code

Inclusive Sections
§§ 31-46a-1—31-46a-228

CONTENTS

Construction Safety Code

Sec. 31-46a-1—31-46a-227. Repealed

Repealed May 15, 1973.

Industrial Safety Code

Sec. 31-46a-228. Industrial safety code Standards (Repealed)

Repealed June 11, 2014.

(Effective May 15, 1973; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Use, Care and Protection of Abrasive Wheels

Sec. 31-46a-A1—31-46a-A4. Repealed

Repealed May 15, 1973.

Agency

Department of Labor

Subject

Commissioner of Labor's Work Training Standards for Apprenticeship and Training Programs

Inclusive Sections

§§ 31-51d-1—31-51d-12

CONTENTS

Commissioner of Labor's Work Training Standards for Apprenticeship and Training Programs

Sec. 31-51d-1. Purpose and scope

This regulation publishes the Labor Commissioner's work training standards, policies and procedures related to the approval, registration, cancellation and deregistration of apprenticeship and other on the job programs and agreements.

(Effective January 22, 1980)

Sec. 31-51d-2. Apprenticeship definitions

(a) "Commissioner" means the Commissioner of Labor for the State of Connecticut.

(b) "Department" means the Connecticut Labor Department, Office of Job Training and Skill Development which is the registration agency for all programs.

(c) "Director" means the administrator of the Office of Job Training and Skill Development.

(d) "Council" means the Connecticut State Apprenticeship Council which recommends policy concerning apprenticeship to the Commissioner.

(e) "Apprentice" means a person employed with a sponsor receiving skill training under a written agreement which provides specific terms of apprenticeship and employment including but not limited to wage progression; specific hours of job training processes; hours and courses of school instruction which satisfactory completion thereof provides recognition as a qualified professional, technical, craft or trade worker.

(f) "Pre-apprentice" means a person, student or minor employed under a written agreement with an apprenticeship program sponsor for a term of training and employment not exceeding 2,000 hours or 24 months. During this period pre-apprentices may be paid less than the apprentice starting rate but not less than the minimum wage.

(g) "Trainee" means a person employed with a sponsor receiving on the job training under a written agreement which provides for specific terms of employment and training including but not limited to wage progression; specific hours of job training processes; hours and courses of school instruction which satisfactory completion thereof provides recognition of attaining a specific occupational objective which is not recognized as a full craft skill. All requirements of this regulations pertaining to apprentices and apprenticeship programs apply to trainees and training programs.

(h) "Journeyperson" means any person who has completed an apprenticeship or is recognized/classified as a skilled person and possesses a valid journeyperson card of occupational license when required.

(i) "Apprentice Agreement" means a written agreement entered into by an apprentice or, in case of a minor 16 and 17 years of age only, on his behalf by his parent or guardian with an employer or with an association of employees and an organization of employers acting as a joint apprenticeship committee which agreement provides for not less than (2) two thousand hours of work experience in approved trade training consistent with recognized requirements established by industry or joint labor-industry practice and for the

number of hours of related and supplemental instructions prescribed by the Council or which agreement meets requirements of the federal government for on the job training schedules which are essential in the opinion of the Labor Commissioner for the development of man power in Connecticut industries.

(j) "Apprenticeship Program" shall mean a plan containing all terms and training of apprentices including such matters as the requirements for a written agreement.

(k) "Sponsor" shall mean any duly established firm, association, committee, organization or corporation permanently located within the State of Connecticut with recognized capability to operate an apprenticeship program and in whose name the program is approved and registered.

(*l*) "Employer" shall mean any establishment which is party to an apprenticeship program employing an apprentice whether or not such establishment is a party to an apprenticeship agreement with the apprentice.

(m) "Apprenticeship Committee" means those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint" i.e. it is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "non-joint" and shall mean a program sponsor in which a bona fide collective bargaining agent is nonexistent or has waived participation.

(n) "Related Instruction" means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

(o) "Registration of an apprentice program" means the acceptance and recording of such a program by the department as meeting the basic standards and requirements of the Commissioner for approval of such program where required for federal and state purpose. Approval is evidenced by formal notice in writing from the Office of the Commissioner.

(p) "Registration of an apprentice" means the acceptance and recording of a duly executed apprenticeship agreement by the Commissioner as evidence of participation in a particular bona fide registered apprenticeship program as required for state or federal purposes.

(q) "Bona fide apprentice" means an apprentice training and registered under standards recognized by the Secretary of Labor or a state apprenticeship agency.

(Effective January 22, 1980)

Sec. 31-51d-3. Eligibility and procedure for approval and registration

(a) No apprenticeship program or agreement shall be eligible for approval and registration unless it is in conformity with the requirements of this regulation.

(b) The apprentice must be individually registered by filing copies of each apprenticeship agreement with the director. This registration is not transferable from one program sponsor

to another program sponsor without written notice to the director and formal transfer thereof. When sponsor reorganization occurs, transfer of program obligations to the new entity is allowed when new organization is controlled by former principal officers or owners. Registration is reserved for those desiring to learn a trade through reasonably continuous employment. Agreements shall not be registered for persons desiring only work or employment on a substantially shorter work week than is prevailing in the industry. This, however, does not apply to pre-apprentices who are pursuing a course of career study as students in the same trade or in study related to the trade.

(c) The director shall be notified promptly of the termination or suspension of any registered training agreement, with cause for same, and of apprenticeship and training completions. Certification of the registration status of any apprentice shall be issued in writing by the director upon request.

(d) Any modification(s) or change(s) to registered standards shall be promptly submitted to the director and, if duly approved, shall be recorded and acknowledged as a revision of such standards.

(e) Under a program proposed for approval and registration by an employer or employers' association where the standards, collective bargaining agreement or other instrument provides for participation by a union in any matter in the operation of the substantive matters of the apprenticeship program and such participation is exercised, written acknowledgement of union agreement or "no objection" to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of the application for registration and of the apprenticeship program. The director shall provide a reasonable time of not less than 30 days nor more than 60 days for receipt of union comments, if any, before final action on the application for registration for approval.

(f) If the sponsor is involved in any abnormal labor condition such as a strike, lockout, or other similar condition, the approval of an apprenticeship program may be temporarily suspended until such issue is resolved.

(g) If it should be determined by the department that a sponsor is in violation of any federal or state labor laws or rules or regulation, the apprenticeship program approval may be suspended until such issue is resolved.

(Effective January 22, 1980)

Sec. 31-51d-4. Criteria for apprenticeable occupations

An apprenticeable occupation is a trade or occupation which possesses all of the following characteristics:

(a) Is customarily learned in a practical way through a structured systematic program of on the job supervised training;

(b) It is clearly identified and commonly recognized throughout the industry;

(c) It involves manual, mechanical or technical skill and knowledge which requires a

minimum of 2,000 hours of on the job work experience; and

(d) It requires a recommended minimum equivalent of 144 hours per year related instruction to supplement the on the job training.

(Effective January 22, 1980)

Sec. 31-51d-5. Standards of apprenticeship

An apprenticeship program, to be eligible for approval and registration by the department, shall conform to the following standards:

(a) The program is an organized, written plan embodying the terms and conditions of employment, training and supervision of one or more apprentices in an apprenticeable occupation and subscribed to by the sponsor's standards. All apprentice employees under the jurisdiction of a sponsor's standards must be duly registered;

(b) A statement of the trade, craft or occupation to be taught and the required hours for completion of training;

(c) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job and the allocation of the approximate time to be spent in each major process;

(d) A statement of the number of hours to be spent in related instruction per year. A minimum of 144 hours per year is recommended. The department may, with the advice of the Council in the best interest of apprenticeship, reduce or increase the hours of related instruction of which instruction may be given in a classroom through trade or industrial courses or by correspondence courses of equivalent value or other forms of self-study;

(e) A statement of the progressively increasing scale of wages to be paid the apprentice consistent with the skill acquired, the entry wage to be not less than the average minimum wage prescribed by industry practice, public contracts, state laws, respective regulation, or by collective bargaining agreement. All apprenticeship programs within the construction industry shall have progressive wage scales negotiated on a normal percentage factor of the sponsor's minimum journeyperson completion base rate. The percentage rate will remain constant but the journeyperson completion rate will conform to the prevailing journeyperson rate posted for each project if higher than the base rate;

(f) A statement that time spent in related classroom instruction, if during a scheduled work period, shall be considered as time worked and paid accordingly with the exception that hours spent in classroom instruction may not be used in computing overtime;

(g) A provision for a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship; during the period of probation, an apprenticeship agreement may be terminated at the request in writing of any party thereto, and that during the entire period of the apprenticeship the sponsor may terminate the apprenticeship agreement for good cause with due notice to the apprentice and a reasonable opportunity for corrective action after giving all parties notice and opportunity to be heard;

(h) Provision that the services of the department may be utilized for consultation

regarding the settlement of differences arising out of the apprenticeship agreement and where the differences cannot be adjusted locally, or in accordion with the established trade procedure, and such differences which cannot be amicably settled by the parties may be submitted to the department for final decision;

(i) Provision for the numeric ration of apprentices to journeypersons consistent with proper supervision, training, safety, and reasonable continuity of employment, and applicable provisions in collective bargaining agreements. Each program's ratio requirements are reviewed based on such factors as specific trade requirements, availability of skilled personnel, previous training history, economic factors, affirmative action efforts and such other factors which may be pertinent to a successful program operation. Regardless of any established hiring ratio, the work site ratio shall not be less than one full-time journeyperson instructing and supervising the work of each apprentice in a specific trade;

(j) Provision for transfer of employer's training obligation in a multi-employer program when an employer is unable to fulfill the obligation under the apprenticeship agreement to another employer under the same program with the consent of the apprentice and apprenticeship committee or program sponsor, with full credit to the apprentice for satisfactory time and training earned;

(k) Provision for apprentices suspended because of lack of work to be reinstated before new apprentices are hired. Such periods of suspension shall not be for intermittent periods. The suspension and reinstatement of apprentices shall be done in accordance with the collective bargaining agreement or in relation to retention of the most advanced apprentice;

(*l*) Provision for minimum qualifications required for persons entering the apprenticeship program;

(m) Provision for granting of an advanced standing or credit for previously acquired experience, training, or skills for each sponsor's applicants equally, with commensurate wages for any progression so granted;

(n) A provision that the employer shall instruct the apprentice in safe and healthful work practices and shall insure that the apprentice is trained in facilities and other environments that are in compliance with state and federal occupational safety and health standards;

(o) A provision for the placement of an apprentice under a written apprenticeship agreement which shall directly or by reference incorporate the standards of the program as part of the agreement;

(p) A provision for periodic review and evaluation of the apprentice's progress in job performance and in related instruction, and the maintenance of appropriate progress records;

(q) A provision of recognition for successful completion of apprenticeship and journeyperson status evidenced by an appropriate certificate issued by the department;

(r) Identification of the approval and registration agency;

(s) Provision for the approval, registration, cancellation and deregistration of the program, and requirement for the prompt submission of any modification or revision thereto;

(t) Provision for registration of apprenticeship agreements and revisions, notice to the department of persons who have successfully completed apprenticeship programs, and

notice of terminations and suspension of apprenticeship agreements and causes therefore;

(u) A documentation of the committee organization and a statement of the functions of the committee are required if the program sponsor is an apprenticeship committee;

(v) A statement containing the equal opportunity pledge prescribed as follows: The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religious creed, age*, marital status, national origin, ancestry, sex, mental retardation or physical disability including but not limited to blindness; unless such disability prevents performance of the work involved in the apprenticeship program. The sponsor will operate the apprenticeship program as required under applicable laws, regulations and executive orders.

(w) Name and address of the appropriate authority under the program to receive, process and make dispositions of complaints and maintain appropriate record keeping.

* C.G.S.-31-126 exempts apprenticeship from age requirements.

(Effective January 22, 1980)

Notes: Section republished to fix footnote publication issue. (November 04, 2016)

Sec. 31-51d-6. Apprenticeship agreement

The apprenticeship agreement shall contain explicitly or by reference:

(a) Name and signature of the contracting parties (apprentice and the program sponsor or employer) and the signature of a parent or guardian if the apprentice is a minor; (ages 16 and 17);

(b) The date of birth, the address, sex, race and ethnic information, education level of the apprentice;

(c) Name and address of the program sponsor and registration agency;

(d) A statement of the trade or craft in which the apprentice is to be trained and the beginning date and term of apprenticeship;

(e) A statement showing:

(1) the number of hours to be spent by the apprentice in work on the job; and

(2) the number of hours to be spent in related and supplemental instruction;

(f) A statement setting forth a schedule of the work processes in the trade in which the apprentice is to be trained and the approximate time to be spent at each process;

(g) A statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time shall be compensated when classes are held outside of a scheduled work period;

(h) Statements providing:

(1) that during the probationary period apprenticeship agreement may be terminated by either party to the agreement without stated cause with notice to the department;

(2) that after the probationary period the agreement may be terminated at the request of the apprentice, or may be suspended or terminated by the sponsor for good cause with due notice to the apprentice and a reasonable opportunity for corrective action and with written notice to the department of the final action taken;

(i) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination because of race, color, religious creed, age*, marital status, national origin, ancestry, sex, mental retardation or physical disability including, but not limited to blindness; unless such disability prevents performance of the work involved in the apprenticeship program.

(j) Name and address of the appropriate authority, if any, designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement; any such controversies and differences which cannot be amicably settled by the parties may be submitted to the department for final decision;

(k) A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

* C.G.S.-31-126 exempts apprenticeship from age requirements.

(Effective January 22, 1980)

Notes: Section republished to fix footnote publication issue. (November 04, 2016)

Sec. 31-51d-7. Deregistration of programs

Deregistration of a program may be effected upon the voluntary action of the sponsor by a request for cancellation of the registration or, upon reasonable cause, by the department instituting formal deregistration proceedings in accordance with the provisions of this regulation.

(a) **Request by sponsor.** The department may cancel the registration of an apprenticeship program by a written acknowledgment of such request stating but not limited to the following:

(1) the registration is cancelled at the sponsor's request and giving the effective date of such cancellation; and

(2) that within 15 working days of the date of the acknowledgment, the sponsor must notify all apprentices of such cancellation and the effective date and that such cancellation automatically deprives the apprentice of his/her individual registration.

(b) **Deregistration by department**.

(1) deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated or administered in accordance with the registered standards. In its discretion the department may allow the sponsor a reasonable time to achieve voluntary corrective action. The Council may conduct an informal hearing prior to a formal notice.

(2) once a final decision of non-compliance is made the department shall so notify the program sponsor by registered mail, return receipt requested, shall state deficiency(ies) and remedy(ies) require and shall state that the program will be deregistered for cause unless corrective action is taken within 30 days.

(3) upon request by the sponsor, the 30 day period may be extended for up to an additional 30 day period. During the period for correction the sponsor may be assisted in every reasonable way by the department.

(4) if the required action is not taken within the allotted time, the department shall send a notice to the sponsor by registered mail or certified mail, return receipt requested, stating the following:

(i) this notice is sent pursuant to this subsection;

(ii) that certain deficiencies were called to the sponsor's attention and remedial action requested;

(iii) based upon the stated cause, the program will be deregistered unless within 15 work days of receipt of this notice the sponsor requests a hearing; and

(iv) if a hearing is not requested by the sponsor, the program will be automatically deregistered.

(5) if the sponsor requests a hearing, the department shall convene a hearing in accordance with Connecticut General Statutes, Section 4-177 through 4-181 inclusive.

(a) Within 10 work days of a request for a hearing, the department shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice shall include:

(1) statement of the time, place and nature of hearing;

(2) a statement of legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and regulations involved. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved;

(4) a short and plain statement of the matters asserted;

(5) every order of deregistration shall contain a provision that the sponsor shall, within 15 work days of the effective date of order, notify all registered apprentices of the deregistration of the program, the effective date and that such action automatically deprives the apprentice of his/her individual registration.

(Effective January 22, 1980)

Sec. 31-51d-8. Reinstatement of programs

Any apprenticeship program deregistered may be reinstated upon presentation of adequate evidence that the apprenticeship program will operate in accordance with registered standards with the department.

(Effective January 22, 1980)

Sec. 31-51d-9. Complaints

(a) This section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints shall be submitted, processed and resolved in accordance with state or federal equal opportunity laws.

(b) Any controversy or difference arising under an apprenticeship agreement which cannot be resolved locally, or which is not covered by a collective bargaining agreement, may be submitted by an apprentice or his/her authorized representative to the department for review.

(c) The complaint in writing and signed by the complainant, or authorized representative, shall be submitted within 60 days of the final local decision. It shall set forth the specific matter(s) complained of together with all relevant facts and circumstances. Copies of all pertinent documents and correspondence shall accompany the complaint.

(d) The Council shall render an opinion within 90 days after receipt of the complaint based upon such investigation of the matters submitted as may be found necessary and the record before it. During the 90 day period, the Council shall make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties shall be notified that the case is closed. Where a decision is rendered, copies of the decision shall be sent to all interested parties which shall be final.

(Effective January 22, 1980)

Sec. 31-51d-10. Reciprocity

(a) When a sponsor of an apprenticeship program which is registered and operating in another state or territory requests registration from the department to train apprentices in a permanent facility located in this state, the sponsor will be granted registration providing the sponsor conforms with this regulation.

(b) An apprentice registered as a bona fide apprentice in a neighboring state will be awarded certification of registration for state purposes upon request.

(Effective January 22, 1980)

Sec. 31-51d-11. Exemptions

The Commissioner with advice from the Council may grant exemptions to any part of this regulation upon written request of any program participant. On matters which involve exemptions for federal purposes the Administrator of the Bureau of Apprenticeship and Training of the U.S. Labor Department will be consulted for concurrence and approval.

(Effective January 22, 1980)

Sec. 31-51d-12. Authority for regulation

(a) This regulation is promulgated pursuant to See. 31-51d and in conformance with the uniform Administrative Procedures Act, Chapter 54 of the Connecticut General Statutes.

(Effective January 22, 1980)

Agency
Department of Labor

Subject
Individual Development Accounts Program

Inclusive Sections
§§ 31-51ddd-1—31-51ddd-16

CONTENTS

Individual Development Accounts Program

Sec. 31-51ddd-1. Definitions

As used in sections 31-51ddd-1 through 31-51ddd-16, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Account Holder" means "account holder" as defined in section 31-51ww of the Connecticut General Statutes;

(2) "Adjusted gross income" means "adjusted gross income" as defined in subsection (a) of section 12-701 of the Connecticut General Statutes;

(3) "Approved plan" means "approved plan" as defined in section 31-51ww of the Connecticut General Statutes;

(4) "Area median income" means "area median income" as defined in section 31-51ww of the Connecticut General Statutes;

(5) "Certified state IDA program" or "program" means "certified state IDA program" as defined in section 31-51ww of the Connecticut General Statutes;

(6) "Clearinghouse" means "clearinghouse" as defined in section 31-51ww of the Connecticut General Statutes;

(7) "Community-based organization" means "community-based organization" as defined in section 31-51ww of the Connecticut General Statutes;

(8) "Department" means the Labor Department;

(9) "Earned income" means any compensation payable by an employer to an employee, including but not limited to wages, salaries, commissions, bonuses, and tips, earnings from self-employment or contractual agreements, and Earned Income Tax Credit refunds.

(10) "Education" means "education" as defined in section 31-51ww of the Connecticut General Statutes;

(11) "Emergency withdrawal" means a withdrawal by an account holder from those funds deposited by the account holder in his individual development account due to a personal crisis, including but not limited to, illness, eviction, potential foreclosure, job loss or urgent family reasons;

(12) "Entrepreneurial activity" means "entrepreneurial activity" as defined in section 31-51ww of the Connecticut General Statutes;

(13) "Federal poverty level" means "federal poverty level" as defined in section 31-51ww of the Connecticut General Statutes;

(14) "Financial institution" means "financial institution" as defined in section 31-51ww of the Connecticut General Statutes;

(15) "Household" means "household" as defined in section 31-51ww of the Connecticut General Statutes;

(16) "Individual development account" or "IDA" means "individual development account" as defined in section 31-51ww of the Connecticut General Statutes;

(17) "Individual Development Account Reserve Fund" means "Individual Development Account Reserve Fund" as defined in section 31-51ww of the Connecticut General Statutes;

(18) "Job training" means "job training" as defined in section 31-51ww of the

Connecticut General Statutes; and

(19) "Qualified disabled individual" means "qualified disabled individual" as defined in section 31-51ww of the Connecticut General Statutes.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-2. Eligibility requirements for account holders

(a) To participate in a certified state IDA program, an individual, at the time of application, shall be a member of a household located in Connecticut whose adjusted gross income is not in excess of eighty per cent of the area median income for the area in which the individual resides and shall:

(1) have earned income; or

(2) be a qualified disabled individual as defined in subdivision (19) of section 31-51ddd-1 of the Regulations of Connecticut State Agencies.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-3. Selection criteria

In the selection of account holders, a community-based organization shall use its best efforts to ensure that at least thirty percent of the individual development account holders have earned income at or below two hundred percent of the federal poverty level.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-4. Permissible savings goals of individual development accounts

Individual development accounts shall only be established for one of the following purposes:

(1) the costs of education or job training;

(A) Education costs for an account holder are all costs which are necessary for the enrollment and successful completion of a program of education, as defined in subdivision (10) of section 31-51ddd-1 of the Regulations of Connecticut State Agencies, including but not limited to tuition, fees, books, supplies and equipment.

(B) Job training costs for an account holder are all costs which are necessary for the enrollment and successful completion of a job training program, including but not limited to tuition, fees, books, supplies and equipment.

(2) the costs of purchasing a home as the account holder's primary residence, which costs shall not exceed one hundred-twenty percent of the average area purchase price applicable to such residence, and may include but not be limited to the costs of acquiring, constructing, or reconstructing a residence, including any usual or reasonable settlement, financing, or other closing costs;

(3) the participation in or development of a new or existing entrepreneurial activity for which a business plan has been developed with the direct or indirect assistance of the community-based organization.

(4) the purchase of an automobile for the purpose of obtaining or maintaining

employment; or

(5) the purchase of a lease deposit on the account holder's primary residence.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-5. Support services

Each community-based organization operating a certified state IDA program shall provide the following services to an account holder:

(1) Credit history assessments;

(2) Assistance in credit repair and on-going credit stability;

(3) General financial education approved by the department;

(4) Training specific to the permissible savings goal selected by the account holder; and

(5) Case management for account holders, which includes, but is not limited to, the following:

(A) Assisting account holders to develop and revise, as necessary, their approved savings plans to achieve asset-building goals;

(B) Providing crisis intervention for account holders in emergency situations; and

(C) Reviewing with account holders their monthly account statements and providing counseling as appropriate.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-6. Individual development account reserve fund

(a) The department shall establish and administer an Individual Development Account Reserve Fund for the following purposes:

(1) to provide grants to community-based organizations that are operating certified state IDA programs. The grants shall:

(A) provide matching funds for the individual development accounts;

(B) assist the community-based organizations in providing training, counseling and case management for account holders; and

(C) be utilized for the administration of the program by the community-based organization;

(2) to provide funds for the department's administrative expenses and evaluation of the Connecticut IDA Initiative by the department; and

(3) for the operation of the clearinghouse.

(b) Private contributors may designate no more than ninety per cent of their contributions to the Individual Development Account Reserve Fund to a specific community-based organization's program.

(c) Any funds issued from the Individual Development Account Reserve Fund for matching funds on behalf of individual account holders shall have a matching rate of at least one dollar for every dollar deposited in the account by the account holder, but shall not exceed two dollars for every dollar deposited in the account by the account holder. Funds used for such matching purposes shall not exceed one thousand dollars per account holder

for any calendar year, or three thousand dollars per account holder for the duration of the account holder's participation in the program.

(d) No more than five percent of the total funds received by the community-based organization from the Individual Development Account Reserve Fund may be used for the costs of program administration; and the combined cost of training, counseling, case management and administration shall not exceed fifteen percent of such total funds.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-7. Establishment and maintenance of local reserve fund

A community-based organization shall establish, through written governing instruments with a financial institution, a separate local reserve fund into which the department shall deposit funds granted to the community-based organization from the Individual Development Account Reserve Fund and in which the community-based organization shall deposit any funds received for the program from any other source.

(a) **Successful completion.** When the account holder has deposited sufficient funds in the individual development account to meet the savings goals specified in the approved savings plan, the community-based organization shall pay such amount together with the matching funds, plus interest earned, from the community-based organization's local reserve fund directly to the person or entity providing the goods or services. The community-based organization shall ensure that the expenditure by or on behalf of the account holder is lawful and prudent.

(b) **Termination by account holder.** When an account holder notifies the community-based organization of his desire to terminate his participation in the program prior to completion, the community-based organization shall return to the account holder those funds, plus interest earned, deposited by the account holder in his individual development account and any matching funds, plus interest earned on the matching funds, shall be forfeited. The community-based organization shall be required to return such matching funds, and interest earned, for redeposit in the Individual Development Account Reserve Fund not later than December 31st of each year, except as provided in section 31-51ddd-9 of the Regulations of Connecticut State Agencies.

(c) **Termination for non-performance.** When matching funds from the Individual Development Account Reserve Fund have not been paid out by the community-based organization to a permissible savings goal on behalf of an account holder due to the account holder's failure to make deposits in accordance with the approved savings plan within five years of the date of the establishment of such account, the matching funds from the Individual Development Account Reserve Fund, plus interest earned, shall be returned by the community-based organization to the department within thirty days of the termination of the account for redeposit in the Individual Development Account Reserve Fund.

(d) **Community-based organization unable to continue program.** When the community-based organization operating the certified state IDA program determines that it is unable to continue operating the program, the community-based organization shall

immediately contact the account holders and the department and initiate the contingency plan on record with the department. The community-based organization shall also notify the financial institution in which the organization has established the individual development accounts and local reserve fund.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-8. Leaves of absence

An account holder may request a leave of absence for reasons including, but not limited to, illness, eviction, death, divorce, loss of employment. The community-based organization may grant an account holder a leave of absence for up to two years within the five-year maximum duration of the account holder's participation in the program. Where an account holder does not return to the program upon exhaustion of an approved leave of absence, the community-based organization shall return any savings deposited by the account holder, plus interest earned, to the account holder.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-9. Emergency withdrawals

An account holder may request an emergency withdrawal, as defined in section 31-51ddd-1 of the Regulations of Connecticut State Agencies. The community-based organization may grant an account holder's request for an emergency withdrawal. When a request for an emergency withdrawal has been granted, the withdrawal is limited to those funds, plus interest earned, deposited by the account holder. When the account holder makes an emergency withdrawal, the community-based organization may retain the matching funds, plus interest earned, for the account holder in its local reserve fund until the account holder either redeposits the withdrawn funds, or leaves the program.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-10. Reporting requirements

(a) A community-based organization whose program has been granted certification shall report to the department no later than November 1st of each year in a manner prescribed by the department. The report shall include (1) the number of individual development accounts established and their status; (2) verification that deposits are being made by the account holders pursuant to the approved savings plan; (3) the balance and sources of funding in the community-based organization's local reserve fund, and (4) all matching fund activity.

(b) The community-based organization shall provide such additional information as required by the department.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-11. Approved plan

(a) The community-based organization operating a certified state IDA program shall be required to enter into an approved plan with each account holder.

(b) The approved plan shall contain the following requirements:

(1) a provision that the community-based organization shall establish in a timely manner an individual development account on behalf of the account holder;

(2) a provision that the account holder's participation in the program shall not extend beyond five years from the date of the establishment of such account;

(3) a deposit plan specifying the amount, form and schedule of deposits to be made by the account holder;

(4) the rate at which the account holder's deposits will be matched;

(5) the permissible savings goal for which the account is maintained;

(6) a provision that the community-based organization shall provide financial literacy training approved by the department;

(7) a provision that the account holder shall attend the financial literacy training;

(8) a provision that the community-based organization shall provide asset-specific training based upon the permissible savings goal;

(9) a provision that the account holder shall attend the asset-specific training;

(10) an explanation of the withdrawal policies, including the policies governing withdrawal of savings upon completion of the program, early withdrawal due to an account holder's decision to leave the program, termination of account due to nonperformance by the account holder, and emergency withdrawals;

(11) a provision that the account holder may request an emergency withdrawal or leave of absence;

(12) a provision allowing for the development of a contingency plan in the event the account holder exceeds or fails to meet the savings goals outlined in the agreement;

(13) a provision that the community-based organization shall implement the contingency plan on record with the department in the event the organization is no longer able to operate the program;

(14) a provision that any agreement for the investment of assets shall be at the direction of the account holder after consultation with the community-based organization;

(15) a provision that the community-based organization shall not require an account holder to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution or other entity.

(16) a provision designating one or more beneficiaries of the funds, plus accrued interest, deposited by the account holder in the individual development account in the event of the account holder's death;

(17) a provision that the agreement may be modified only with the concurrence of the community-based organization and the account holder.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-12. Financial institutions

(a) A community-based organization operating a certified state IDA program shall be required to enter into a written governing instrument with a financial institution.

(b) The written governing agreement shall provide for (1) the establishment of individual development accounts in the form of Trust or Custodial Accounts for the benefit of the account holders, which conform to the requirements of the Assets for Independence Act, Public Law 105-285, as amended from time to time, and into which accounts the account holders shall make deposits; (2) an assurance that the financial institution shall pay at least a market rate of interest on the individual development accounts; and (3) an assurance that the financial institution shall not require an account holder to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution or other entity.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-13. Certification and review process

(a) A community-based organization seeking certification of its existing or proposed IDA program shall submit its request to the department. The request shall include:

(1) evidence of the community-based organization's exempt status from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 or any subsequent corresponding provisions of the internal revenue code of the United States, as from time to time amended;

(2) a plan outlining the community-based organization's proposed or existing IDA program which shall satisfy the requirements of sections 31-51ddd-1 through 31-51ddd-16, inclusive, of the Regulations of Connecticut State Agencies;

(3) a description of the community-based organization's proposed process of selecting account holders;

(4) a financial budget specifying the costs of training, counseling, case management, and administration of the program, provided such budget contains an assurance that no more than five percent of the total funds received from the IDA Reserve Fund are to be used for the costs of program administration and no more than fifteen percent of such total funds are to be used for the combined costs of training, counseling, case management and program administration;

(5) a description of the organization's accounting procedures, including whether the community-based organization participates in Generally Accepted Accounting Principles;

(6) any history the community-based organization has had in successfully operating individual development account programs and a detailed description of such programs;

(7) a description of the manner in which the community-based organization presently coordinates with other local organizations;

(8) a description of how the community-based organization will publicize the program;

(9) a description of the community-based organization's procedures and timelines for the establishment of the individual development account to ensure that such establishment is sufficiently expedient to safeguard the account holder's interest.

(10) a description of its procedures for monitoring account holder deposits and matching funds deposits; and

(11) a description of the community-based organization's contingency plan in the event the community-based organization is no longer able to operate the program. Such contingency plan shall include but not be limited to: (A) a requirement of immediate notice to all account holders and the department; and (B) all actions the community-based organization shall take to ensure the orderly closing of the program.

(b) The department shall review the request for certification and notify the community-based organization in writing whether the organization's request for certification has been approved or disapproved. Any notice of disapproval shall include the reasons for the disapproval. The department's determination shall be final. A community-based organization may resubmit a request for certification once the basis for the department's denial of certification has been removed.

(c) The department shall review certified state IDA programs on an annual basis.

(d) The department may conduct site reviews of any individual development account program at any time for compliance with applicable statutes, regulations and contracts.

(e) Community-based organizations operating certified state IDA programs shall provide the department with full access to any program records upon request.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-14. Suspension and decertification process

(a) The department may suspend or decertify a community-based organization's program for non-compliance with applicable statutes, regulations and contracts.

(b) When the department suspends or decertifies a community-based organization's program, the organization may request reconsideration by the Labor Commissioner of such suspension or decertification. The Labor Commissioner's decision shall be final. A community-based organization may request in writing a reinstatement of the program where a community-based organization has shown to the satisfaction of the department that the basis for the suspension or decertification no longer exists.

(c) A community-based organization whose program has been suspended or decertified shall not participate in the solicitation process until the program has been reinstated.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-15. Solicitation for funding grants

(a) The department shall publicly solicit proposals for grants from available funds in the Individual Development Account Reserve Fund from community-based organizations to operate certified state IDA programs.

(b) The department shall review all proposals and notify the community-based organization in writing whether the proposal has been accepted or rejected.

(c) In its review of proposals, the department shall, to the extent possible, consider the geographic location of the community-based organization.

(Adopted effective October 1, 2002)

Sec. 31-51ddd-16. Application and implementation

When an individual believes that he has been unfairly denied access to a certified state IDA program or otherwise treated inequitably as an account holder, the individual may complain to the department no later than thirty days after the alleged injury.

The department shall investigate the complaint and shall attempt to informally resolve it. Where applicable, the department may refer the individual to the appropriate state or federal agency for potential relief.

(Adopted effective October 1, 2002)

Agency

Department of Labor

Subject

Procedures and Guidelines for Hearings, Redress and Employer Reporting to the Labor Commissioner Under the Family and Medical Leave Act

Inclusive Sections

§§ 31-51ee-1—31-51ee-8

CONTENTS

Procedures and Guidelines for Hearings, Redress and Employer Reporting to the Labor Commissioner Under the Family and Medical Leave Act

Sec. 31-51ee-1. Repealed

Repealed March 9, 1999.

Sec. 31-51ee-2—31-51ee-8. Transferred

Transferred to Sec. 31-51qq-42—31-51qq-48., March 9, 1999

Agency
Department of Labor

Subject
Employment of Illegal Aliens

Inclusive Sections
§§ 31-51k-1—31-51k-2

CONTENTS

Employment of Illegal Aliens

Sec. 31-51k-1. Prohibition of employment of illegal aliens

No employer or agent or representative of an employer shall employ an alien not entitled to lawful residence in the United States. For the purposes of this regulation, "lawful residence" is the legal presence within the United States in compliance with any and all applicable laws, regulations administered and enforced by the U.S. Immigration and Naturalization Service, permits issued by the U.S. Department of Labor, and all other agencies or instrumentalities of the United States having jurisdiction or power to control the entry, visitation, length of stay, work, commerce, exit, and deportation of persons. This definition includes temporary as well as permanent residence by aliens provided, however, that the alien concerned has been given official permission to work by the federal agency, commission, or instrumentality having jurisdiction to do so.

(Effective April 16, 1973)

Sec. 31-51k-2. Employment of alien to be recorded

Each employer who employs or continues to employ an alien shall record the name, address, and alien registration number and/or the date of issue of such type of document which authorizes employment in the United States of such employee. All such records shall be preserved at least three years. They shall be accessible, during the actual operating hours of each employer, to the labor commissioner or his representatives upon presentation of properly executed credentials.

(Effective April 16, 1973)

As exhibits to these regulations Exhibit 1 and Exhibit 2 are hereby made parts thereof.

Sec. Exhibit 1.

Exhibit 1

OFFICE OF THE COMMISSIONER

STATE OF CONNECTICUT
LABOR DEPARTMENT
200 FOLLY BROOK BOULEVARD,
WETHERSFIELD, CONNECTICUT 06109

TO ALL PRIVATE EMPLOYMENT AGENCIES, INDIVIDUALS, PARTNERSHIPS, CORPORATIONS, AND OTHER BUSINESS ENTITIES LICENSED UNDER SECTION 31-130, GENERAL STATUTES OF CONNECTICUT:

Public Act 275 of the 1972 session of the General Assembly, passed on May 24, 1972, prohibits employers from employing aliens who are not entitled to lawful residence in the United States. Violation of this Act is punishable by a minimum fine of $200 and for subsequent offenses by penalties provided by law for Class A misdemeanors. A copy of Public Act 275 is enclosed.

As licensees of the State Labor Commissioner, employment and information agencies are required to post a copy of Public Act 275 conspicuously in the office. The provisions of this law are required to be brought to the attention of every employer with whom the agency transacts any business and of every applicant for employment.

Jack A. Fusari
Labor Commissioner

Enclosure

House Bill No. 5470

PUBLIC ACT NO. 275

AN ACT PROHIBITING THE HIRING OF ILLEGAL ALIENS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States.

Sec. 2. Violation of the provisions of this act shall be punishable by a fine of not less than two hundred nor more than five hundred dollars and, for any subsequent offense, by the penalty for a class A misdemeanor.

Sec. 3. The labor commissioner shall, on or before October 1, 1972, promulgate regulations specifying the procedure to be followed by each employer to insure compliance with the provisions of this act.

Sec. 4. This act shall take effect from its passage.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1972.

_____

Governor.

Sec. Exhibit 1.

Exhibit 2

CSES-1
(REV. 7/72)

MEMORANDUM

From the Office of the Director
Connecticut State Employment Service

To - All CSES Managers **Date** - September 29, 1972

Index Section - Technical-Clearance + Immigration **Retain Until** - Indefinitely

Subject - Registration of Non-Citizens

References - ES Manual, Part II, Sections 1005 A. and 1060

Public Act No. 275 recently passed by the Connecticut legislature prohibits the hiring of illegal aliens. All local offices must take care to prevent the registration and subsequent referral of illegal aliens. The following sections of the manual are reviewed for relevancy:

Part II, Section 1005 A. POLICY
It is the policy of the Employment Service to accept an application from any applicant, legally qualified to work without regard to his place of residence, current employment status, or occupational qualifications.

Part II, Section 1060. CITIZENSHIP
Check the appropriate block to indicate whether or not the applicant is a citizen of the U. S.

An applicant who is not legally qualified to work should NOT be registered with the Employment Service. An applicant who is not a citizen will be required to produce a document which clearly establishes that the individual is legally qualified to accept employment in the U.S. Vital information from the document must be recorded on the application card CSES-511 before completion of a valid registration and subsequent referral.

The following types of documents are the most common ones to be identified:

1. FORM I-151, ALIEN REGISTRATION RECEIPT CARD.
   This form is issued to any alien who is classified as an immigrant and in any manner becomes a lawful permanent resident of the U.S. EMPLOYMENT IS PERMITTED. The laminated 2" x 3 1/2" card is generally green or blue and may or may not contain a picture of the alien along with his name and Registration Number. THIS REGISTRATION NUMBER MUST BE RECORDED ON THE CSES-511.

2. FORM I-94, ARRIVAL-DEPARTURE RECORD.
   The 3" x 5" card is issued to aliens admitted temporarily as nonimmigrants and shows the date to which admitted and any extensions authorized. Generally, employment is NOT permitted. However, in some instances employment may be permitted by permission from the U.S. Immigration Service. The alien's Arrival-Departure Record/Form I-94 will be clearly dated and stamped "Employment Authorized". THE CSES-511 MUST INDICATE THAT EMPLOYMENT AUTHORIZED ON FORM I-94 AND DATE OF SUCH AUTHORIZATION.

3. FORM I-94, ARRIVAL-DEPARTURE RECORD, PAROLE EDITION.
   This edition of Form I-94 is issued to aliens who have been paroled into the U.S. and shows date to which paroled and other limitations. Except for emergencies, medical treatment, or similar limited paroles, employment is generally permitted. THE CSES-511 MUST INDICATE FORM I-94 PAROLE EDITION.

All other types of documents presented by a non-citizen (alien) may be clarified by contacting the U.S. Department of Justice, Immigration and Naturalization Service, 135 High Street, Hartford, Connecticut. An alien who possesses a Visitor's Visa classified B-2 is not permitted employment.

Joseph P. Dyer

JOSEPH P. DYER
Director

JB:gd

Agency
Department of Labor

Subject
The Family and Medical Leave Act

Inclusive Sections
§§ 31-51qq-1—31-51qq-48

CONTENTS

The Family and Medical Leave Act

Sec. 31-51qq-1. Definitions (See 29 CFR § 825.800)
(See 29 CFR § 825.800)

For purposes of sections 31-51qq-1 to 31-51qq-48, inclusive, of the Regulations of Connecticut State Agencies:

(a) "Act" or "FMLA" means Sections 31-51kk to 31-51qq, inclusive, of the Connecticut General Statutes.

(b) "ADA" means the Americans With Disabilities Act (42 U.S.C. 12101 *et seq*.).

(c) "Commissioner" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut, 06109, or his designee.

(d) "Continuing treatment" means a serious health condition involving continuing treatment by a health care provider which includes any one or more of the following:

(1) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment,

such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(e) "Department" means the Connecticut Labor Department.

(f) "Eligible employee" means an employee who:

(1) has been employed for a total of at least 12 months by the employer on the date on which any family or medical leave is to commence; and

(2) on the date on which any family or medical leave is to commence, has been employed for at least 1,000 hours of service with such employer during the previous 12-month period.

(g) "Employ" means to allow or permit to work.

(h) "Employee" means any person engaged in service to an employer in the business of the employer.

(i) "Employer" means a person engaged in any activity, enterprise or business who employs 75 or more employees. The term "employer" includes:

(1) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(2) any successor in interest of the employer.

The term "employer" does not include the state, a municipality, a local or regional board of education, or a private or parochial elementary or secondary school. For purposes of sections 31-51qq-1 through 31-51qq-48 of the Regulations of Connecticut State Agencies, inclusive, the number of employees of an employer shall be determined on October first annually.

(j) "Employment benefits" means:

(1) all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by practice or written policy of an employer or through an "employee benefit plan" as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

(2) The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage.

(k) "FLSA" means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

(l) "Health care provider" means:

(1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices;

(2) a podiatrist, dentist, psychologist, optometrist or chiropractor authorized to practice by the state in which such person practices and performing within the scope of the authorized practice;

(3) an advanced practice registered nurse, nurse practitioner, nurse midwife or clinical social worker authorized to practice by the state in which such person practices and performing within the scope of the authorized practice;

(4) a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts;

(5) any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;

(6) a health care provider as defined in subdivisions (1) to (5), inclusive, of this subsection who practices in a country other than the United States and who is licensed to practice in accordance with the laws and regulations of that country; or

(7) such other health care provider as the Commissioner determines, performing within the scope of the authorized practice. The Commissioner may utilize any determinations made pursuant to Chapter 568 of the General Statutes.

(m) "In loco parentis" includes, but is not limited to, persons with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(n) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(o) "Intermittent leave" means family or medical leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time. Intermittent leave may include periods from an hour or more to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

(p) "Labor department" means the State of Connecticut Labor Department.

(q) "Medical leave" means a leave of absence, which may be unpaid, due to a serious health condition of an eligible employee.

(r) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or organized groups of persons.

(s) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR Part 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., define these terms.

(t) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(u) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, nursing home or residential medical care facility; or continuing treatment, including outpatient treatment, by a health care provider. For the purposes of this section:

(1) an illness, injury, impairment, or physical or mental condition involves:

(A) Inpatient care (i.e., an overnight stay) in a hospital, as defined in Section 19a-490 of the General Statutes, hospice licensed pursuant to the public health code or certified as a hospice pursuant to 42 U.S.C. Section 1395x, nursing home licensed pursuant to Chapter 368v of the General Statutes, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(B) Continuing treatment by a health care provider, including outpatient treatment. A serious health condition involving continuing treatment by a health care provider includes:

(i) A period of incapacity (*i.e.*, inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(aa) Treatment two or more times, including outpatient treatment, by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(bb) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider, including outpatient treatment.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(aa) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(bb) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(cc) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney

disease (dialysis).

(2) Treatment for purposes of subdivision (1) of this subsection includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under subdivision (1)(B)(i)(bb) of this subsection, a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.*, oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of section 31-51qq-1(u) of the Regulations of Connecticut State Agencies are met.

(4) Substance abuse may be a serious health condition if the conditions of section 31-51qq-1(u) of the Regulations of Connecticut State Agencies are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for State FMLA leave.

(5) Absences attributable to incapacity under subdivisions (1)(B)(ii) or (iii) of this subsection qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(v) "Son or daughter" means a biological, adopted or foster child, a stepchild or legal ward, or a child of a person standing in loco parentis, as defined in subsection (m) of this section, provided such child is under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.

(w) "Spouse" means a husband or wife, as the case may be.

(Adopted effective March 9, 1999)

Sec. 31-51qq-2. What employers are covered by the act?
(See 29 CFR § 825.104)

(a) "Employer" is defined in section 31-51qq-1(i) of the Regulations of Connecticut State Agencies.

(b) Normally, the legal entity which employs the employee is the employer under FMLA. Applying this principle, a corporation is a single employer rather than its separate establishments or division.

(1) Where one corporation has an ownership interest in another corporation, it is a separate employer unless it meets the "joint employment" test discussed in section 31-51qq-3 of the Regulations of Connecticut State Agencies or the "integrated employer" test contained in subdivision (2) of this subsection.

(2) Separate entities shall be deemed to be parts of a single employer for purposes of FMLA if they meet the "integrated employer" test. Where this test is met, the employees of all entities making up the integrated employer shall be counted in determining employer coverage and employee eligibility. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship shall be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(A) Common management;

(B) Interrelation between operations;

(C) Centralized control of labor relations; and

(D) Degree of common ownership/financial control.

(c) An "employer" includes any person who acts directly or indirectly in the interest of an employer to any of the employer's employees. The definition of "employer" in section 3(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(d), similarly includes any person acting directly or indirectly in the interest of an employer in relation to an employee. As under the FLSA, individuals such as corporate officers "acting in the interest of an employer" are individually liable for any violations of the requirements of the FMLA.

(Adopted effective March 9, 1999)

Sec. 31-51qq-3. In determining whether an employer is covered by FMLA, what does it mean to employ 75 or more employees on October first annually?
(See 29 CFR § 825.105)

(a) Any employee whose name appears on the employer's payroll for the week including October first shall be considered employed for that week and shall be counted, whether or not any compensation is received for the week.

(b) Employees on paid or unpaid leave, including FMLA leave, leaves of absence, disciplinary suspension, etc., are counted as long as the employer has a reasonable

expectation that the employee shall later return to active employment. If there is no present employer/employee relationship (as when an employee is laid off, whether temporarily or permanently), such individual is not counted. Part-time employees, like full-time employees, are considered to be employed for the week including October first, as long as they are maintained on the payroll.

(c) Once an employer meets the 75 or more employee threshhold on October first, the employer remains covered until the number of employees is determined on the following October first.

(Adopted effective March 9, 1999)

Sec. 31-51qq-4. How is "joint employment" treated under FMLA?
(See 29 CFR § 825.106)

(a) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under FMLA. Joint employers may be separate and distinct entities with separate owners, managers and facilities. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally shall be considered to exist in situations such as:

(1) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(2) Where an employer acts directly or indirectly in the interest of the other employer in relation to the employee; or,

(3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because an employer controls, is controlled by, or is under common control with the other employer.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment shall ordinarily be found to exist when a temporary or leasing agency supplies employees to a second employer.

(c) In joint employment relationships, only the primary employer is responsible for giving required notices to its employees, and providing FMLA leave. Factors considered in determining which is the "primary" employer include authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employment benefits. For employees of temporary help or leasing agencies, for example, the placement agency most commonly would be the primary employer.

(d) Employees jointly employed by two employers must be counted by both employers, whether or not maintained on one of the employer's payroll, in determining employer coverage and employee eligibility. For example, an employer who jointly employs 20 workers from a leasing or temporary help agency and 60 permanent workers is covered by FMLA. An employee on leave who is working for a secondary employer is considered

employed by the secondary employer, and shall be counted for coverage and eligibility purposes, as long as the employer has a reasonable expectation that that employee shall return to employment with that employer.

(e) Job restoration is the primary responsibility of the primary employer. The secondary employer is responsible for accepting the employee returning from FMLA leave in place of the replacement employee if the secondary employer continues to utilize an employee from the temporary or leasing agency, and the agency chooses to place the employee with the secondary employer. A secondary employer is also responsible for compliance with the prohibited acts provisions with respect to its temporary/leased employees, whether or not the secondary employer is covered by FMLA (see section 31-51qq-24 of the Regulations of Connecticut State Agencies). The prohibited acts include prohibitions against interfering with an employee's attempt to exercise rights under the Act, or discharging or discriminating against an employee for opposing a practice which is unlawful under FMLA. A covered secondary employer shall be responsible for compliance with all the provisions of the FMLA with respect to its regular, permanent workforce.

(Adopted effective March 9, 1999)

Sec. 31-51qq-5. What is meant by "successor in interest"?
(See 29 CFR § 825.107)

(a) For purposes of FMLA, in determining whether an employer is covered because it is a "successor in interest" to a covered employer, the factors used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Adjustment Act shall be considered. However, unlike Title VII, whether the successor has notice of the employee's claim is not a consideration. Notice may be relevant, however, in determining successor liability for violations of the predecessor. The factors to be considered include:

(1) Substantial continuity of the same business operations;
(2) Use of the same plant;
(3) Continuity of the work force;
(4) Similarity of jobs and working conditions;
(5) Similarity of supervisory personnel;
(6) Similarity in machinery, equipment, and production methods;
(7) Similarity of products or services; and
(8) The ability of the predecessor to provide relief.

(b) A determination of whether or not a "successor in interest" exists is not determined by the application of any single criterion, but rather the entire circumstances are to be viewed in their totality.

(c) When an employer is a "successor in interest," employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer. For example, the successor, whether or not it meets FMLA coverage criteria, shall grant leave for eligible employees who had provided appropriate notice to the predecessor, or continue leave begun while employed by the predecessor, including job

restoration at the conclusion of the leave. A successor which meets FMLA's coverage criteria shall count periods of employment and hours worked for the predecessor for purposes of determining employee eligibility for FMLA leave.

(Adopted effective March 9, 1999)

Sec. 31-51qq-6. Which employees are "eligible" to take a leave under FMLA? (See 29 CFR § 825.110)

(a) An "eligible employee" is defined in section 31-51qq-1(f) of the Regulations of Connecticut State Agencies.

(b) The 12 months an employee shall have been employed by the employer need not be consecutive months. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months," 52 weeks is deemed to be equal to 12 months.

(c) Whether an employee has worked the minimum of 1000 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work (see 29 CFR Part 785). The determining factor is the number of hours an employee has worked for the employer within the meaning of the FLSA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer. Any accurate accounting of actual hours worked under FLSA's principles may be used. In the event an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*e.g.*, bona fide executive, administrative, and professional employees as defined in sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies), the employer has the burden of showing that the employee has not worked the requisite hours. In the event the employer is unable to meet this burden, the employee is deemed to have met this test. An employer shall be able to clearly demonstrate that such an employee did not work 1000 hours during the previous 12 months in order to claim that the employee is not "eligible" for FMLA leave.

(d) The determination of whether an employee has worked for the employer for at least 1000 hours in the past 12 months and has been employed by the employer for a total of at least 12 months shall be made as of the date leave commences. If an employee notifies the employer of need for FMLA leave before the employee meets these eligibility criteria, the employer shall either confirm the employee's eligibility based upon a projection that the employee shall be eligible on the date leave would commence or shall advise the employee when the eligibility requirement is met. If the employer confirms eligibility at the time the notice for leave is received, the employer may not subsequently challenge the employee's

eligibility. In the latter case, if the employer does not advise the employee whether the employee is eligible as soon as practicable (i.e., two business days absent extenuating circumstances) after the date employee eligibility is determined, the employee shall have satisfied the notice requirements and the notice of leave is considered current and outstanding until the employer does advise.

(Adopted effective March 9, 1999)

Sec. 31-51qq-7. Under what kinds of circumstances are employers required to grant family or medical leave?

(See 29 CFR § 825.112)

(a) Employers covered by the FMLA are required to grant leave to eligible employees for one or more of the following:

(1) Upon the birth of a son or daughter of the employee;

(2) Upon the placement of a son or daughter with the employee for adoption or foster care;

(3) In order to care for the spouse, or a son or daughter or parent of the employee or parent of the employee's spouse, if such spouse, son, daughter, parent or parent of the employee's spouse has a serious health condition; or

(4) Because of a serious health condition of the employee.

(b) The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or care of a child.

(c) Circumstances may require that the FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave pursuant to subdivision (4) of subsection (a) of this section before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) Employers covered by FMLA are required to grant FMLA leave pursuant to subsection (a)(2) of this section before the actual placement or adoption of a child if absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, or submit to physical examination. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(e) Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family shall take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(f) In situations where the employer/employee relationship has been interrupted, such

as an employee who has been on layoff, the employee shall be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

(g) FMLA leave is available for treatment for substance abuse provided the conditions of section 31-51qq-1(u) of the Regulations of Connecticut State Agencies are met. However, treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for an immediate family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for an immediate family member receiving treatment for substance abuse.

(Adopted effective March 9, 1999)

Sec. 31-51qq-8. For purposes of an employee qualifying to take FMLA leave for a spouse, parent of the employee, parent of the employee's spouse, son or daughter, what may an employer require to confirm a family relationship?

(See 29 CFR § 825.113)

For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or child's birth certificate, a court document, etc. The employer is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

(Adopted effective March 9, 1999)

Sec. 31-51qq-9. What does it mean that an employee is "needed to care for" a family member?

(See 29 CFR § 825.116)

(a) The medical certification provision that an employee is "needed to care for" a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse, parent of the employee or parent of the employee's spouse with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to fill in for

others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently - such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

(Adopted effective March 9, 1999)

Sec. 31-51qq-10. For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by the "medical necessity for" such leave? (See 29 CFR § 825.117)

(a) For intermittent leave or leave on a reduced leave schedule, there shall be a medical need for leave (as distinguished from voluntary treatments and procedures) and it shall be that such medical need can best be accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (see section 31-51qq-31 of the Regulations of Connecticut State Agencies) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule shall attempt to schedule leave so as not to disrupt the employer's operation. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

(Adopted effective March 9, 1999)

Sec. 31-51qq-11. How much leave may an employee take? (See 29 CFR § 825.200)

(a) An eligible employee is limited to a total of 16 workweeks of leave during any 24-month period for any one or more of the following reasons:

(1) Upon the birth of a son or daughter of the employee;

(2) Upon the placement of a son or daughter with the employee for adoption or foster care;

(3) In order to care for the spouse, or a son or daughter or parent of the employee or parent of the employee's spouse, if such spouse, son, daughter, parent of the employee or parent of the employee's spouse has a serious health condition; or

(4) Because of a serious health condition of the employee.

(b) The 24-month period shall begin with the first day of leave taken for one or more of the reasons in subsection (a) of this section.

(c) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employer's business

activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (*e.g.*, a Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 16 week leave entitlement are also described in section 31-51qq-16 of the Regulations of Connecticut State Agencies.

(Adopted effective March 9, 1999)

Sec. 31-51qq-12. If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?
(See 29 CFR § 825.201)

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless the employer permits leave taken for a longer period. Any such FMLA leave shall be concluded within this one-year period.

(Adopted effective March 9, 1999)

Sec. 31-51qq-13. How much leave may a husband and wife take if they are employed by the same employer?
(See 29 CFR § 825.202)

(a) A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 16 workweeks during any 24 month period if such leave is taken upon the birth or placement of a son or daughter for adoption or foster care or to care for a sick parent of the employee or sick parent of the employee's spouse.

(b) The limitation on the total weeks of leave applies to leave taken for the reasons specified in subsection (a) of this section as long as husband and wife are employed by the same employer.

(1) For example, it would apply even though the spouses are employed at two different worksites of an employer or by two different operating divisions of the same company.

(2) If one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 16 week entitlement.

(c) Where the husband and wife both use a portion of the total 16 week FMLA leave entitlement for one of the purposes specified in subsection (a) of this section, each would be entitled to the difference between the amount he or she has taken individually and 16 weeks for FMLA leave for a purpose other than those contained in subsection (a) of this section.

(1) For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 10 weeks due to his or her own serious health condition or to care for a child with a serious health condition. Any period of pregnancy disability would be considered FMLA for a serious health condition of the mother and would not be

subject to the combined limit.

(Adopted effective March 9, 1999)

Sec. 31-51qq-14. Does FMLA leave have to be taken all at once, or can it be taken in parts?

(See 29 CFR § 825.203)

(a) FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take a leave intermittently or on a reduced leave schedule only if the employer agrees. Such a schedule reduction might occur, for example, where an employee, with the employer's agreement, works part-time after the birth of a child, or takes leave in several segments. The employer's agreement is not required for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(c) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(1) Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.

(A) Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of several months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(B) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated.

(d) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less.

(1) For example, an employee might take two hours off for a medical appointment, or

might work a reduced day of four hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave.

(Adopted effective March 9, 1999)

Sec. 31-51qq-15. May an employer transfer an employee to an "alternative position" in order to accommodate intermittent leave or reduced leave schedule? (See 29 CFR § 825.204)

(a) If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on the planned medical treatment for the employee or family member, including during a period of recovery from a serious health condition, or if the employer agrees to permit intermittent leave or reduced leave schedule for the birth of a child or the placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

(b) The exercise of the authority to transfer an employee to an alternative position, taken pursuant to this section, shall not conflict with any provision of a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the employee is a part. In addition transfer to an alternative position may require compliance with federal law (such as the Americans with Disabilities Act) or state law, including the Fair Employment Practices Act. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

(c) The alternative position shall have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary.

(1) For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

(d) An employer may not transfer the employee to an alternative position to discourage the employee from taking a leave or otherwise work a hardship on the employee.

(1) For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an

employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employer to make such a transfer shall be deemed a prohibited act under the FMLA.

(e) When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position, no longer needs to continue on leave and is able to return to full-time work, the employee shall be placed in the same or equivalent job he or she left when the leave commenced.

(Adopted effective March 9, 1999)

Sec. 31-51qq-16. How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

(See 29 CFR § 825.205)

(a) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 16 weeks of leave to which an employee is entitled.

(1) For example, if an employee who normally works five days a week takes off one day, the employee would use ⅕ of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

(1) For example, if an employee who normally works 30 hours per week, works only 20 hours a week under a reduced leave schedule, the employee's 10 hours of leave would constitute 1/3 of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employer has made a permanent or long-term change in the employee's schedule (for other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 16 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

(Adopted effective March 9, 1999)

Sec. 31-51qq-17. May an employer deduct hourly amounts from an employee's salary when providing unpaid leave under FMLA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee?

(See 29 CFR § 825.206)

Leave taken under FMLA may be unpaid. If an employee is otherwise exempt from

minimum wage and overtime requirements under Chapter 558 of the general statutes as a salaried executive, administrative, or professional employee under sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies, providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the exemption. This means that in sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in Sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies, the employer may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employer provides FMLA leave, whether paid or unpaid, and maintains records required by this part regarding FMLA leave, shall not be relevant to the determination whether an employee is exempt within the meaning of sections 31-60-14, 31-60-15 and 31-60-16 of the Regulations of Connecticut State Agencies and Chapter 558 of the Connecticut General Statutes.

(Adopted effective March 9, 1999)

Sec. 31-51qq-18. Is FMLA leave paid or unpaid?
(See 29 CFR § 825.207)

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute paid leave for FMLA leave. If the employee does not choose to substitute accrued paid leave for FMLA leave, the employer may require the employee to substitute accrued paid leave for FMLA leave.

(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child, parent of the employee or parent of the employee's spouse who has a serious health condition. The term "family leave" as used in FMLA refers to paid leave provided by the employer covering the particular circumstances for which the employee seeks leave for either the birth of a child and to care for such child, placement of a child for adoption or foster care, or care for a spouse, child, parent of the employee or parent of the employee's spouse with a serious health condition.

(1) For example, if the employer's leave plan allows use of family leave to care for a child but not for a parent, the employer is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent.

(c) Substitution of paid accrued vacation, personal or medical/sick leave may be made for any unpaid leave needed to care for a family member, or the employee's own serious health condition. Substitution of medical/sick leave may be elected to the extent the circumstances meet the employer's usual requirements for the use of medical/sick leave. An employer is not required to allow substitution of paid sick or medical leave for unpaid

FMLA leave "in any situation" where the employer's uniform policy would not normally allow such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employer's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have the right to substitute paid medical/sick leave for a serious health condition which is not covered by the employer's leave plan.

(d) Disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 16 weeks of leave permitted under FMLA. Because the leave pursuant to a temporary disability benefit plan is not unpaid, the provision for substitution of paid leave is inapplicable. However, the employer may designate the leave as FMLA leave and count the leave as running concurrently for purposes of both the benefits plan and the FMLA leave entitlement. If the requirements to qualify for payments pursuant to the employer's temporary disability plan are more stringent than those of FMLA, the employee shall meet the more stringent requirements of the plan, or may choose not to meet the requirements of the plan and instead receive no payments from the plan and use unpaid FMLA leave or substitute available accrued paid leave.

(e) A serious health condition may result from injury to the employee "on or off" the job. Either the employer or the employee may choose to have the employee's FMLA 16 week leave entitlement run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job". As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 16 week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employer may require the use of accrued paid leave. See also sections 31-51qq-25(d), 31-51qq-32(a) and 31-51qq-40 of the Regulations of Connecticut State Agencies regarding the relationship between workers' compensation absences and FMLA leave.

(f) Paid vacation or personal leave, including leave earned or accrued under plans allowing "paid time off", may be substituted, at either the employee's or employer's option, for any qualified FMLA leave. No limitations may be placed by the employer on substitution of paid vacation or personal leave for these purposes.

(g) If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee shall remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(h) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave shall not count against the 16 weeks of FMLA leave to which the employee

is entitled.

(1) For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 16 weeks of FMLA leave entitlement.

(i) When an employee or employer elects to substitute paid leave (of any type) for unpaid FMLA leave under circumstances permitted by these regulations, and the employer's procedural requirements for taking that kind of leave are less stringent than the requirements of FMLA (e.g., notice or cancellation requirements), only the less stringent requirements may be imposed. An employee who complies with an employer's less stringent leave plan requirements in such cases may not have leave for an FMLA purpose delayed or denied on the grounds that the employee has not complied with stricter requirements of FMLA. However, where accrued paid vacation or personal leave is substituted for unpaid FMLA leave for a serious health condition, an employee may be required to comply with any less stringent medical certification requirements of the employer's sick leave program. (See section 31-51qq-30 of the Regulations of Connecticut State Agencies regarding medical certification.)

(Adopted effective March 9, 1999)

Sec. 31-51qq-19. Under what circumstances may an employer designate leave, paid or unpaid, as FMLA leave and, as a result count it against the employee's total FMLA leave entitlement?

(See 29 CFR § 825.208)

(a) In all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section. In the case of intermittent leave or leave on a reduced schedule, only one such notice is required unless the circumstances regarding the leave have changed. The employer's designation decision shall be based only on information received from the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, *etc.*, may provide notice to the employer of the need to take FMLA leave). In any circumstance where the employer does not have sufficient information about the reason for an employee's use of paid leave, the employer shall inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying.

(1) An employee giving notice of the need for unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employer to determine that the leave qualifies under the Act. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee may provide sufficient information for the employer to designate the paid leave as FMLA leave. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or their plans for using their accrued leave.

(2) As noted in section 31-51qq-27(c) of the Regulations of Connecticut State Agencies,

an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employer of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave — consistent with the employer's established policy or practice — and the employer denies the employee's request, the employee shall provide sufficient information to establish an FMLA-qualifying reason for the needed leave so that the employer is aware of the employee's entitlement (*i.e.*, that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 16-week entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose shall state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the FMLA-qualifying event against the employee's 16-week entitlement.

(b) Once the employer has acquired knowledge that the leave is being taken for an FMLA required reason, the employer shall promptly (within two business days absent extenuating circumstances) notify the employee that the paid leave is designated and shall be counted as FMLA leave. If there is a dispute between an employer and an employee as to whether paid leave qualifies as FMLA leave, it shall be resolved through discussions between the employee and the employer. Such discussions and the decision shall be documented.

(1) The employer's notice to the employee that the leave has been designated as FMLA leave may be orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice shall be no later than the subsequent payday). The written notice may be in any form, including a notation on the employee's pay stub.

(c) If the employer requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision shall be made by the employer within two business days of the time the employee gives notice of the need for leave or, where the employer does not initially have sufficient information to make a determination, when the employer determines that the leave qualifies as FMLA leave if this happens later. The employer's designation shall be made before the leave starts, unless the employer does not have sufficient information as to the employee's reason for taking the leave until after the leave commenced. If the employer has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with subsection (b) of this section), the employer may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full

protections of the Act, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 16-week FMLA leave entitlement.

(d) If the employer learns that leave is for an FMLA purpose after leave has begun, such as when an employee gives notice of the need for an extension of the paid leave with unpaid FMLA leave, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualifies as FMLA leave.

(1) For example, an employee is granted two weeks paid vacation leave for a skiing trip. In mid-week of the second week, the employee contacts the employer for an extension of leave as unpaid leave and advises that at the beginning of the second week of paid vacation leave the employee suffered a severe accident requiring hospitalization. The employer may notify the employee that both the extension and the second week of paid vacation leave (from the date of the injury) is designated as FMLA leave. On the other hand, when the employee takes sick leave that turns into a serious health condition (*e.g.*, bronchitis that turns into bronchial pneumonia) and the employee gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave.

(e) Employers may not designate leave as FMLA leave after the employee has returned to work with two exceptions:

(1) If the employee was absent for an FMLA reason and the employer did not learn the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period), the employer may, upon the employee's return to work, promptly (within two business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee. If leave is taken for an FMLA leave, the employee shall notify the employer within two business days of returning to work that the leave was for an FMLA reason. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.

(2) If the employer knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the employer has requested medical certification which has not yet been received or the parties are in the process of obtaining a second medical opinion, the employer shall make a preliminary designation, and so notify the employee, at the time leave begins, or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the employer shall withdraw the designation (with written notice to the employee).

(Adopted effective March 9, 1999)

Sec. 31-51qq-20. Is an employee entitled to benefits while using FMLA leave? (See 29 CFR § 825.209)

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (*e.g.*, holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid,

as appropriate).

(Adopted effective March 9, 1999)

Sec. 31-51qq-21. What are an employee's rights on returning to work from FMLA leave?

(See 29 CFR § 825.214)

(a) Except as provided in subsection (b) of this section, upon return from FMLA leave, an employee is entitled to be returned to the original position the employee held when leave commenced, or if the original position is not available, to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. (See also section 31-51qq-4(e) of the Regulations of Connecticut State Agencies for the obligations of joint employers.)

(b) If the employee is medically unable to perform the employee's original job upon the expiration of such leave, the employer shall transfer the employee to work suitable to such employee's physical condition if such work is available. In addition, the employer's obligations may also be governed by the Americans with Disabilities Act (ADA).

(Adopted effective March 9, 1999)

Sec. 31-51qq-22. When is the employer obligated to transfer an employee to work suitable to an employee's physical condition?

(a) In the case of a medical leave, if the employee is medically unable to perform the employee's original job at the expiration of the leave, but is still able to perform work of some type, the employer shall transfer such employee to work suitable to such employee's physical condition, if such work is available.

(b) Other work suitable to an employee's physical condition may include part time work, or other work at a lesser pay scale, even if the employee's original job was a full time position.

(c) An employer may request certification from the employee's health care provider that the employee is physically unable to resume work in the employee's original position, but may perform other work. The certification itself need only be a simple statement of an employee's inability to perform the original job and employee's present medical limitations with regard to other suitable work.

(d) Notwithstanding any obligations of the employer under the Americans with Disabilities Act (ADA), if after the expiration of the employee's full FMLA leave entitlement, the employee is unable to resume work in the employee's original job and is transferred to other suitable work, but at some later time is again able to perform the employee's original job, the employer is no longer obligated to reinstate the employee to his original job.

(Adopted effective March 9, 1999)

Sec. 31-51qq-23. What is an equivalent position?
(See 29 CFR § 825.215)

(a) An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including the privileges, perquisites and status. It shall involve the same or substantially similar duties and responsibilities, which shall entail substantially equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) **Equivalent pay**.

(1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed would not have to be granted unless it is the employer's policy or practice to do so with respect to other employees on "leave without pay." In such case, any pay increase would be granted based on the employee's seniority, length of service, or work performed, excluding the period of unpaid FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Many employers pay bonuses in different forms to employees for job-related performance such as for perfect attendance, safety (absence of injuries or accidents on the job) and exceeding production goals. Bonuses for perfect attendance and safety do not require performance by the employee but rather contemplate the absence of occurrences. To the extent an employee who takes FMLA leave had met all the requirements for either or both of these bonuses before FMLA leave began, the employee is entitled to continue this entitlement upon return from FMLA leave, that is, the employee may not be disqualified for the bonus(es) for the taking of FMLA leave. See sections 31-51qq-24(b) and (c) of the Regulations of Connecticut State Agencies. A monthly production bonus, on the other hand does require performance by the employee. If the employee is on FMLA leave during any part of the period for which the bonus is computed, the employee is entitled to the same consideration for the bonus as other employees on paid or unpaid leave (as appropriate).

(d) **Equivalent Benefits.** "Benefits" include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

(e) **Equivalent Terms and Conditions of Employment.** An equivalent position shall

have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee shall be reinstated to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employer transfers all employees from a closed worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee shall have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employer to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to *de minimis* or intangible, unmeasurable aspects of the job. However, restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

(Adopted effective March 9, 1999)

Sec. 31-51qq-24. Are there any limitations on an employer's obligation to reinstate an employee?

(See 29 CFR § 825.216)

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer shall be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employer's responsibility to continue FMLA leave and restore the employee ceases at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise. An employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration.

However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer. See section 31-51qq-5 of the Regulations of Connecticut State Agencies.

(c) In addition to the circumstances explained above, an employer may delay restoration to an employee who fails to provide a fitness for duty certificate to return to work under the conditions described in section 31-51qq-35 of the Regulations of Connecticut State Agencies.

(d) If the employee has been on a workers' compensation absence during which FMLA leave has been taken concurrently, and after 16 weeks of FMLA leave in a two year period, the employee is unable to return to work, the employee no longer has the protections of FMLA and must look to the workers' compensation statute or ADA for any relief or protections.

(Adopted effective March 9, 1999)

Sec. 31-51qq-25. How are employees protected who request leave or otherwise assert FMLA rights?

(See 29 CFR § 825.220)

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

(2) An employer is prohibited from discharging or causing to be discharged or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act or because such employee has exercised the rights afforded to such employee under the Act.

(3) All persons (whether or not employers) are prohibited from discharging or causing to be discharged or in any other way discriminating against any person (whether or not an employee) because that person has:

(A) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the Act;

(B) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the Act; or

(C) Testified, or is about to testify, in any inquiry or proceeding relating to a right under

the Act.

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under FMLA, for example:

(1) Keeping worksites below the 75-employee threshold for employee eligibility under the Act;

(2) Reducing hours available to work in order to avoid employee eligibility.

(c) An employer is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits, the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot "trade off" the right to take FMLA leave against some other benefit offered by the employer. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a "light duty" assignment while recovering from a serious health condition (see section 31-51qq-41(b) of the Regulations of Connecticut State Agencies). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 16 weeks have passed within the 2 year period, including all FMLA leave taken and the period of "light duty."

(e) Individuals, and not merely employees, are protected from retaliation for opposing (*e.g.*, file a complaint about) any practice which is unlawful under the act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or sections 31-51qq-1 to 31-51qq-48, inclusive of the Regulations of Connecticut State Agencies.

(Adopted effective March 9, 1999)

Sec. 31-51qq-26. What notices to employees are required of employers under the FMLA?

(See 29 CFR § 825.301)

(a) If an FMLA-covered employer has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning FMLA entitlements and employee obligations under the FMLA shall be included in the handbook or other document. For example, if an employer provides an employee handbook to all employees that describes the employer's policies regarding leave, wages, attendance, and similar matters, the handbook shall incorporate

information on FMLA rights and responsibilities and the employer's policies regarding the FMLA.

(b) If such an employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA. This notice shall be provided to employees each time notice is given pursuant to subsection (c) of this section, and in accordance with the provisions of that subsection.

(c) The employer shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The written notice shall be provided to the employee in a language in which the employee is literate. Such specific notice shall include, as appropriate:

(1) that the leave shall be counted against the employee's FMLA leave entitlement (see section 31-51qq-19 of the Regulations of Connecticut State Agencies);

(2) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see section 31-51qq-30 of the Regulations of Connecticut State Agencies);

(3) the employee's right to substitute paid leave and whether the employer shall require the substitution of paid leave, and the conditions relating to substitution.

(4) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see section 31-51qq-35 of the Regulations of Connecticut State Agencies).

(5) the employee's right to restoration to the same or an equivalent job upon return from leave (see section 31-51qq-21 of the Regulations of Connecticut State Agencies).

(d) The specific notice may include other information - *e.g.*, whether the employer shall require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice, DOL-FM2, which employers may adapt for their use to meet these specific notice requirements is attached to sections 31-51qq-1 to 31-51qq-48, inclusive of the Regulations of Connecticut State Agencies as Appendix B.

(e) Except as provided in this subsection, the written notice required by subsection (c) of this section (and by subsection (b) of this section where applicable) shall be provided to the employee no less often than the first time in each six month period that an employee gives notice of the need for FMLA leave (if FMLA leave is taken during the six-month period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee - within one or two business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(f) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employer shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subsection (c) which has changed.

(g) Except as required in subsection (h) of this section, if the employer is requiring medical certification or a fitness-for-duty report, written notice of the requirements shall be given with respect to each employee notice of a need for leave.

(h) Subsequent written notification shall **not** be required if the initial notice in the six-month period **and** the employer handbook or other written documents (if any) describing the employer's leave policies, clearly provided that certification or a "fitness-for-duty" report would be required (*e.g.*, by stating that certification would be required in all cases in which a leave of more than a specified number of days is taken, or by stating that a "fitness-for-duty" report would be required in all cases for back injuries for employees in a certain occupation.) Where subsequent written notice is not required, at least oral notice shall be provided. (see section 31-51qq-30 of the Regulations of Connecticut State Agencies)

(i) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

(j) Employers furnishing FMLA-required notices to sensory impaired individuals shall also comply with all applicable requirements under federal or State law.

(k) If an employer fails to provide notice in accordance with the provisions of this section, the employer may not take action against an employee for failure to comply with any provisions required to be set forth in the notice.

(Adopted effective March 9, 1999)

Sec. 31-51qq-27. What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?
(See 29 CFR § 825.302)

(a) An employee shall provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement of a son or daughter for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave shall be required to begin, a change in circumstances, or a medical emergency, such notice as is practicable must be given.

(1) For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall provide such notice as is practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) "Such notice as is practicable" means notice as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, "such notice as is practicable" ordinarily would mean at least verbal notification to the employer within one or two business days of when the need for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may state only that leave is needed for an expected birth or adoption for example. The employer shall inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave.

(d) An employer may also require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave.

(1) For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employer procedures shall not permit an employer to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee shall consult with the employer and make reasonable effort so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employer to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(g) An employer may waive employee's FMLA notice obligations or the employer's own internal rules on leave notice requirements. In addition, an employer may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement or applicable leave plan allow less advance notice to the employer.

(1) For example, if an employee (or employer) elects to substitute paid vacation leave for unpaid FMLA leave, and the employer's paid vacation leave plan imposes no prior notification requirements for taking such vacation leave, no advance notice may be required for the FMLA leave taken in these circumstances. On the other hand, FMLA notice

requirements would apply to a period of unpaid FMLA leave, unless the employer imposes lesser notice requirements on employees taking leave without pay.

(Adopted effective March 9, 1999)

Sec. 31-51qq-28. What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?
(See 29 CFR § 825.303)

(a) When the approximate timing of the need for leave is not foreseeable, an employee shall give such notice to the employer of the need for FMLA leave as is practicable under the facts and circumstances of the particular case. It is expected that an employee shall give notice to the employer within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances of the particular case where such notice is not feasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employer's internal rules and procedures may not be required when FMLA leave is involved.

(b) The employee should provide notice to the employer either in person or by telephone, telegraph, facsimile machine ("fax") or other electronic means. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible party) if the employee is unable to do so personally. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed. The employer shall be expected to obtain any additional required information through informal means. The employee or spokesperson shall be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

(Adopted effective March 9, 1999)

Sec. 31-51qq-29. What recourse do employers have if employees fail to provide the required notice?
(See 29 CFR § 825.304)

(a) An employer may waive employees' FMLA notice obligations or the employer's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employer may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employer of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it shall be clear that the employee had actual notice of the FMLA notice requirements. The need for leave and the approximate date leave would be taken shall have been clearly foreseeable to the employee 30 days in advance of the leave.

(1) For example, knowledge that an employee would receive a telephone call about the

availability of a child for adoption at some unknown point in the future would not be sufficient.

(Adopted effective March 9, 1999)

Sec. 31-51qq-30. When shall an employee provide medical certification to support FMLA leave?

(See 29 CFR § 825.305)

(a) An employer may require that an employee's leave to care for the employee's seriously-ill spouse, son, or daughter, as defined in section 31-51qq-1 of the Regulations of Connecticut State Agencies, or parent, or due to the employee's own serious health condition, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employer shall give notice of a requirement for medical certification each time a certification is required; such notice shall be written notice whenever required by section 31-51qq-26 of the Regulations of Connecticut State Agencies. An employer's oral request to an employee to furnish any subsequent medical certification is sufficient.

(b) When the leave is foreseeable and at least 30 days notice has been provided, the employee shall provide the medical certification before the leave begins. When this is not possible, the employee shall provide the requested certification to the employer within the time frame requested by the employer (which shall allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(c) In most cases, the employer shall request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration.

(d) At the time the employer requests certification, the employer shall also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employer shall advise an employee whenever the employer finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(e) If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent than the certification requirements of this section and section 31-51qq-31 of the Regulations of Connecticut State Agencies, and the employee or employer elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized, only the employer's less stringent sick leave certification requirements may be imposed.

(Adopted effective March 9, 1999)

Sec. 31-51qq-31. How much information may be required in medical certification of a serious health condition?
(See 29 CFR § 825.306)

(a) For purposes of compliance with FMLA, the Department has developed Form DOL-FM1 for employees' (or their family members') use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge. A copy of the form is attached to sections 31-51qq-1 to 31-51qq-48, inclusive, of the Regulations of Connecticut State Agencies as Appendix A.

(b) Form DOL-FM1, or another form containing the same basic information, may be used by the employer; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. The form identifies the health care provider and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) A certification as to which part of the definition of "serious health condition", if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) if different.

(3) Whether it shall be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (*i.e.*, part-time) as a result of the serious health condition, and if so, the probable duration of such schedule.

(4) If the condition is pregnancy or a chronic condition, whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(5) If additional treatments shall be required for the condition, an estimate of the probable number of such treatments. If the patient's incapacity shall be intermittent, or shall require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

(6) If any of the treatments referred to in subdivision (5) of this subsection shall be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.

(7) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen.

(8) If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), whether the employee:

(A) is unable to perform work of any kind;

(B) shall be absent from work for treatment.

(9) If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee shall indicate on the form the care he or she will provide and an estimate of the time period.

(10) If the employee's family member will need care only intermittently or on a reduced leave schedule basis (*i.e.*, part-time), the probable duration of the need.

(c) If the employer's sick or medical leave plan requires less information to be furnished in medical certifications than the certification requirements of this section, and the employee or employer elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized, only the employer's lesser sick leave certification requirements may be imposed.

(Adopted effective March 9, 1999)

Sec. 31-51qq-32. What may an employer do if it questions the adequacy of a medical certificate?

(See 29 CFR § 825.307)

(a) If an employee submits a complete certification signed by the health care provider, the employer may not request additional information from the employee's health care provider. However, a health care provider representing the employer may contact the employee's health care provider, with the employee's permission, for purposes of *clarification* and authenticity of the medical certification.

(1) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to have direct contact with the employee's workers' compensation health care provider, the employer may follow the workers' compensation provisions.

(2) An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employer's established leave policies. The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. See also subsections (e) and (f) of this section.

(b) The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is

located in an area where access to health care is extremely limited (*e.g.*, a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider shall be designated or approved jointly by the employer and the employee. The employer and the employee shall each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer shall be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee shall be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

(d) The employer shall provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

(e) If the employer requires the employee to obtain either a second or third opinion the employer shall reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) In circumstances when the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country.

(Adopted effective March 9, 1999)

Sec. 31-51qq-33. Under what circumstances may an employer request subsequent recertifications of a medical condition?

(See 29 CFR § 825.308)

(a) The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis, provided the standards for determining what constitutes a reasonable basis for recertification may be governed by a collective bargaining agreement between such employer and a labor organization which is the collective bargaining representative of the unit of which the worker is a part if such a collective bargaining agreement is in effect. Unless otherwise required by the employee's health care provider, the employer may not require recertification more than once during a thirty-day period and, in any case, may not unreasonably require recertification.

(b) The employer shall pay for any recertification that is not covered by the employee's health insurance. No second or third opinion on recertification may be required.

(Adopted effective March 9, 1999)

Sec. 31-51qq-34. What notice may an employer require regarding an employee's intent to return to work?

(See 29 CFR § 825.309)

(a) An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and shall take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employer's obligation under FMLA to restore the employee ceases. However, this obligation continues if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employer may require that the employee provide the employer reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employer may also obtain information on such changed circumstances through requested status reports.

(Adopted effective March 9, 1999)

Sec. 31-51qq-35. Under what circumstances may an employer require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?

(See 29 CFR § 825.310)

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

(b) If other provisions of state or local law, or the terms of a collective bargaining agreement, govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the Americans with Disabilities Act (ADA) that any return-to-work physical be job-related and consistent with business necessity apply.

(c) An employer may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself

need only be a simple statement of an employee's ability to return to work. A health care provider employed by the employer may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made.

(d) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(e) Any notice that employers are required to give to each employee giving notice of the need for FMLA leave regarding their FMLA rights and obligations shall advise the employee if the employer will require fitness-for-duty certification to return to work. If the employer has a handbook explaining employment policies and benefits, the handbook shall explain the employer's general policy regarding any requirement for fitness-for-duty certification to return to work. Specific notice shall also be given to any employee from whom fitness-for-duty certification shall be required either at the time notice of the need for leave is given or immediately after leave commences and the employer is advised of the medical circumstances requiring the leave, unless the employee's condition changes from one that did not previously require certification pursuant to the employer's practice or policy. No second or third fitness-for-duty certification may be required.

(f) An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notices required in subsection (e) of this section.

(g) An employer is not entitled to certification of fitness to return to duty when the employee takes intermittent leave. (See section 31-51qq-14 of the Regulations of Connecticut State Agencies.)

(Adopted effective March 9, 1999)

Sec. 31-51qq-36. What happens if an employee fails to satisfy the medical certification and/or recertification requirements?
(See 29 CFR § 825.311)

(a) In the case of foreseeable leave, an employer may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the employer to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(b) When the need for leave is **not** foreseeable, or in the case of recertification, an employee shall provide certification (or recertification) within the time frame requested by the employer (which shall allow at least 15 days after the employer's request) **or** as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a

reasonable time under the pertinent circumstances, the employer may delay the employee's continuation of FMLA leave. If the employee never produces the certification, the leave is not FMLA leave.

(c) When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee shall provide medical certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work if the employer has provided the required notice; the employer may delay restoration until the certification is provided. In this situation, unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

(Adopted effective March 9, 1999)

Sec. 31-51qq-37. Under what circumstances may a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?
(See 29 CFR § 825.312)

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employer may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave. (See section 31-51qq-27 of the Regulations of Connecticut State Agencies.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may delay continuation of FMLA leave until an employee submits the certificate. (See sections 31-51qq-30 and 31-51qq-35 of the Regulations of Connecticut State Agencies.) If the employee never produces the certification, the leave is not FMLA leave.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may delay restoration until the employee submits the certificate. (See sections 31-51qq-33 and 31-51qq-35 of the Regulations of Connecticut State Agencies.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave and restoration cease under FMLA if and when the employment relationship terminates (*e.g.*, layoff), unless that relationship continues, for example, by the employee remaining on paid FMLA leave. If the employee is recalled or otherwise re-employed, an eligible employee is immediately entitled to further FMLA leave for an FMLA-qualifying reason. An employer shall be able to show, when an employee requests restoration, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See section 31-51qq-24 of the Regulations of Connecticut State Agencies.)

(e) An employer may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See section 31-51qq-34 of the Regulations of Connecticut State Agencies.) If an employee unequivocally advises the

employer either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave and restoration ceases unless the employment relationship continues, for example, by the employee remaining on paid leave. An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employer two business days notice where feasible; the employer is required to restore the employee once such notice is given, or where such prior notice was not feasible.

(f) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration provision.

(g) If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was fraudulently obtained as in subsection (f) of this section.

(Adopted effective March 9, 1999)

Sec. 31-51qq-38. How should records and documents relating to medical certifications, recertifications or medical histories be maintained?
(See 29 CFR § 825.500(g))

Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of the Act, shall be maintained as medical records pursuant to chapter 563a of the general statutes, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements (see 29 CFR § 1630.14(c)(1)), except that (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations; (2) first aid and safety personnel may be informed, when appropriate, if the employee's physical or medical condition might require emergency treatment; and (3) government officials investigating compliance with the Act or other pertinent law shall be provided relevant information upon request.

(Adopted effective March 9, 1999)

Sec. 31-51qq-39. What if an employer provides more generous benefits than required by FMLA?
(See 29 CFR § 825.700)

(a) An employer shall observe any employment benefit program or plan that provides greater family and medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the Act may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (*e.g.*, provides lesser pay) is superseded by FMLA. If an employer

provides greater unpaid family leave rights than are afforded by FMLA, the employer is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA), to the additional leave period not covered by FMLA. If an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA, the leave taken does not count against an employee's FMLA entitlement.

(b) Nothing in the Act prevents an employer from amending existing leave and employee benefit programs, provided they comply with FMLA. However, nothing in the Act is intended to discourage employers from adopting or retaining more generous leave policies.

(Adopted effective March 9, 1999)

Sec. 31-51qq-40. Do federal laws providing family and medical leave still apply? (See 29 CFR § 825.701)

Nothing in FMLA supersedes any provision of federal or local law that provides greater family or medical leave rights than those provided by FMLA. Employees are not required to designate whether the leave they are taking is State FMLA leave or federal FMLA leave, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for both State and federal FMLA leave, the leave used counts against the employee's entitlement under both laws. Examples of the interaction between FMLA and federal laws include:

Because State FMLA provides 16 weeks of leave entitlement over two years, an employee would be entitled to take 16 weeks one year under State law and 12 weeks the next year under federal FMLA. Health benefits maintenance under federal FMLA would be applicable only to the first 12 weeks of leave entitlement each year. If an employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year under federal FMLA (not 16 weeks).

(Adopted effective March 9, 1999)

Sec. 31-51qq-41. How does FMLA affect federal and State anti-discrimination laws? (See 29 CFR § 825.702)

(a) Nothing in FMLA modifies or affects federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, marital status, ancestry, present or past history of mental disorder, mental retardation, learning disability or physical disability, including but not limited to blindness, or sexual orientation (e.g., Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act and § 46a-60 of the Connecticut General Statutes).

(b) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under the FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employer). The health care provider providing medical care pursuant to

the workers' compensation injury or illness may certify the employee is able to return to work in a "light duty" position. If the employer offers such a position, the employee is permitted but not required to accept the position. (See section 31-51qq-25 of the Regulations of Connecticut State Agencies.) As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 16-week FMLA leave entitlement is exhausted. (See section 31-51qq-18(d) of the Regulations of Connecticut State Agencies.) If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she shall have rights under the ADA.

(Adopted effective March 9, 1999)

Sec. 31-51qq-42. What employers are covered by the FMLA?

In order to determine which employers may have employed a sufficient number of employees as of October first of the previous year to be covered under the Act, the Commissioner may rely upon data contained in the Employee Quarterly Earnings Report required pursuant to Section 31-225a(j) of the General Statutes (Chapter 567-Unemployment Compensation) for the third quarter of the prior calendar year.

()

Sec. 31-51qq-43. What can employees do who believe that their rights under FMLA have been violated?

(a) Any employee, or his authorized representative, may file a complaint with the Labor Department if he believes that:

(1) his employer has interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) his employer discharged or caused to be discharged, or in any manner discriminated against such employee for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) his employer has violated any provision of the Act with respect to such employee; or

(4) he has been discharged or discriminated against in any manner by an employer who is subject to the Act because such individual:

(A) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act.

The Labor Department will inform any employee who files a complaint, pursuant to this section, that involves disability relating to pregnancy of her right to file a complaint with

the commission on human rights and opportunities as provided in section 46a-82 of the general statutes.

(b) Complaints shall be filed with the Labor Department on such form(s) as are prescribed and furnished by the Labor Department or by letter. The Labor Department may seek any additional information it deems necessary to initiate an investigation.

(c) In order to be considered timely filed, all complaints must be received by the Labor Department or postmarked within one hundred and eighty days of the employer action which prompted the complaint, described in subsection (a) of this section. Any complaint received or postmarked after such one hundred and eighty day period may be considered timely filed for good cause, as defined in subsection (d) of this section.

(d) "Good cause" means any circumstances which, in the opinion of the Commissioner, would prevent a reasonably prudent individual in the exercise of due diligence from timely filing his complaint.

()

Sec. 31-51qq-44. What investigation mechanisms does FMLA provide?

(a) The Labor Department shall investigate complaints filed in accordance with Section 31-51qq-43 of these regulations as expeditiously as possible. The Labor Department may, at its discretion, investigate separate complaints in a consolidated manner.

(b) The Labor Department shall furnish to any employer, who is the subject of a complaint, timely notice that a complaint has been filed and that an investigation has been initiated. Such notice shall contain:

(1) A copy of the complaint;

(2) The right of either party to representation; and

(3) Instructions regarding the need to respond to the complaint.

Any employer furnished with a notice pursuant to this subsection may respond in writing to the Labor Department within twenty-one (21) calendar days of the mailing date of such notice. Such response may include any information, evidence or argument the employer deems relevant or necessary to the Labor Department's investigation. The continuation and completion of an investigation shall not be contingent upon such response.

(c) At any point during the pendency of an investigation, the Labor Department may effect an informal resolution of the complaint which is mutually acceptable to the complainant and the employer.

(d) Where the Labor Department, as the result of an investigation conducted pursuant to this section, has reason to believe that an employer has:

(1) interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) discharged or caused to be discharged, or in any manner discriminated against any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) violated any provision of the Act with respect to an eligible employee, or

(4) discharged, or caused to be discharged, or in any manner discriminated against an eligible employee because such individual:

(A) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act,

the Labor Department shall issue an agency complaint by certified mail to the employer, and a notice of a contested case hearing before the Commissioner, pursuant to Section 31-1-2 of the Regulations of Connecticut State Agencies. A copy of such complaint and notice shall be mailed to the complainant.

(e) Where the Labor Department, as the result of an investigation conducted pursuant to this section, finds that there is no reason to believe that an employer has:

(1) interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) discharged or caused to be discharged, or in any manner discriminated against any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) violated any provision of the Act with respect to an eligible employee, or

(4) discharged, or caused to be discharged, or in any manner discriminated against an eligible employee because such individual:

(A) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the act;

(B) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the act; or

(C) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act,

the Labor Department shall inform the complainant of its finding in a written determination. Such written determination shall advise the complainant of his right to a hearing before the Commissioner, provided a written request for such hearing is received by the Labor Department or postmarked within twenty-one (21) calendar days of the mailing date of such written determination. A copy of such determination shall be mailed to the employer who was the subject of the complaint. The Labor Department shall issue a notice of a contested case hearing to the complainant and the employer in response to any request which is timely filed, pursuant to this subsection.

()

Sec. 31-51qq-45. What are the provisions for resolution and reconsideration prior to a contested case hearing?

(a) From the issuance of a notice of hearing pursuant to subsection (d) or (e) of Section

31-51qq-44 of these regulations until the commencement of a contested case hearing, the Labor Department may effect resolution of any complaint by way of a settlement agreement between the parties, with the approval of the Commissioner. Any settlement agreement shall contain:

(1) The signatures of the complainant and the employer, or their authorized representatives, and the Commissioner;

(2) An express waiver of the right to seek judicial review or otherwise challenge or contest the validity of the agreement or any order contained therein:

(3) A statement that the agreement represents a final disposition of the complaint which shall have the same force and effect as an order entered after a formal hearing; and

(4) Any other provisions appropriate to the settlement.

Once a contested case hearing has commenced, any informal disposition shall be effected pursuant to Section 31-1-4 of the Regulations of Connecticut State Agencies.

(b) The Labor Department may, at its discretion, reconsider any agency complaint issued pursuant to subsection (d) of Section 31-51qq-44 of these regulations, or any written determination issued pursuant to subsection (e) of Section 31-51qq-44 in response to a written request by any party, or on its own initiative.

()

Sec. 31-51qq-46. What procedures govern the contested case hearings?

The Rules of Procedure for Hearings in Contested Cases to be Conducted by the Labor Commissioner (Sections 31-1-1 to 31-1-9, inclusive, of the Regulations of Connecticut Agencies) shall apply to any hearing scheduled pursuant to Section 31-51qq-44 of these regulations.

In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved.

()

Sec. 31-51qq-47. What types of redress may the commissioner order?

Where, in his final decision, the Commissioner concludes that an employer has:

(1) interfered with, restrained or denied the exercise of, or the attempt to exercise, any rights provided under the Act;

(2) discharged or caused to be discharged, or in any manner discriminated against any individual for opposing any practice made unlawful by the Act or because such employee has exercised the rights afforded to such employee under the Act;

(3) violated any provision of the Act with respect to an eligible employee, or

(4) discharged, or caused to be discharged, or in any manner discriminated against an

eligible employee because such individual:

(A) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to the Act;

(B) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the Act; or

(C) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Act,

the Commissioner may order the employer to comply with the applicable requirements of the Act and to provide such relief as the Commissioner determines will remedy the harm incurred by the complainant as a result of the employer's violation, discharge or discrimination. Such relief may include but is not limited to restoration of any rights, benefits, entitlements or protections afforded to the employee by the Act, reinstatement to employment, back pay and any other monetary compensation for any loss which was the direct result of the employer's violation, discharge or discrimination.

()

Sec. 31-51qq-48. What are employers required to report to the labor department concerning their experience with the FMLA?

(a) The Labor Department shall furnish to employers who are subject to the Act a form for reporting their family and medical leave experience on an annual basis. Employers shall complete and return such report to the Labor Department by April first of the year following the calendar year which is the subject of the report.

(b) Employers shall report the following data for each calendar year for which they are subject to the Act:

(1) Employer's name;

(2) Number of employees;

(3) Number of family leaves approved for birth or adoption, and duration;

(4) Number of family leaves approved for family illness, and duration;

(5) Number of medical leaves approved, and duration;

(6) Any other information the Commissioner determines necessary to assess the current experience of employers with medical and family leaves of absence.

Any family or medical leave approved under the Act which includes less than five days unpaid leave need not be reported to the Labor Department.

(c) Any employer who believes that it is not subject to the FMLA in that it has less than 75 employees may so indicate on the report form referred to in subsection (a) and return the form to the address indicated along with a copy of its payroll for the week including October first of the previous calendar year.

()

Agency
Department of Labor

Subject
Family and Medical Leave for School Paraprofessionals

Inclusive Sections
§§ 31-51rr-1—31-51rr-57

CONTENTS

Family and Medical Leave for School Paraprofessionals

Sec. 31-51rr-1. Definitions (29 CFR § 825.800)

As used in sections 31-51rr-1 to 31-51rr-47, inclusive, of the Regulations of Connecticut State Agencies:

(1) "FMLA" means section 31-51rr of the Connecticut General Statutes.

(2) "Act" means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq., as amended).

(3) "Active duty" or "call to active duty status" means duty under a call or order to active duty or notification of an impending call or order to active duty in support of a contingency operation pursuant to Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least twenty (20) years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.

(4) "ADA" means the Americans With Disabilities Act (42 U.S.C. 12101 et seq., as amended from time to time).

(5) "CFEPA" means the Connecticut Fair Employment Practices Act, section 46a-51 of the Connecticut General Statutes.

(6) "COBRA" means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended (Pub. L. 99–272, title X, section 10002; 100 Stat. 227; 29 U.S.C. 1161–1168).

(7) "Contingency operation" means a military operation that:

(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or

Congress.

(8) "Covered military member" means the employee's spouse, son, daughter, or parent on active duty or call to active duty status.

(9) "Eligible employee" or "employee" means:

(A) A "paraprofessional," as defined in section 31-51rr-1(20) of the Regulations of Connecticut State Agencies, who has been employed for a total of at least twelve (12) months by the employer on the date on which any FMLA leave is to commence, except that an employer need not consider any period of previous employment that occurred more than seven (7) years before the date of the most recent hiring of the employee, unless:

(i) The break in service is occasioned by the fulfillment of the employee's National Guard or Reserve military service obligation or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service, such as for purposes of the employee furthering his or her education or for childrearing purposes; and

(B) An individual who, on the date on which any FMLA leave is to commence, has been employed for at least nine hundred fifty (950) hours of service after the effective date of sections 31-51rr-1 et seq. of the Regulations of Connecticut State Agencies with such employer during the previous twelve (12)-month period, except that:

(i) An employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours-of-service that would have been performed but for the period of military service in determining whether the employee worked the nine hundred fifty (950) hours of service. Accordingly, a person reemployed following military service has the hours that would have been worked for the employer added to any hours actually worked during the previous twelve (12)-month period to meet the nine hundred fifty (950)-hour requirement.

(ii) To determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule can generally be used for calculations.

(10) "Employ" means to suffer or permit to work.

(11) "Employer" means any political subdivision of the State of Connecticut. "Political subdivision" shall be construed and interpreted to include without limitation, any town, city, county, borough, district, school board, board of education, board of regents, social service or welfare agency, public and quasi-public corporation, housing authority, parking authority, redevelopment and urban renewal board or commission, or other authority or public agency established by law, and any water district, sewer district or similar authority established by special act or existing under the Connecticut General Statutes.

(12) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan" as defined in section 3(3) of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3). The term does not include non-employment related obligations

paid by employees through voluntary deductions such as supplemental insurance coverage.

(13) "FLSA" means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

(14) "Group health plan" means any plan of, or contributed to by, an employer, including a self-insured plan, to provide health care, directly or otherwise, to the employer's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(A) No contributions are made by the employer;

(B) Participation in the program is completely voluntary for employees;

(C) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(D) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(E) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(15) "Health care provider" means:

(A) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery, as appropriate, by the State in which the doctor practices; or

(B) Any other person determined by the Commissioner to be capable of providing health care services.

(i) Others "capable of providing health care services" include only:

(I) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, authorized to practice in the State and performing within the scope of their practice as defined under State law;

(II) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(III) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination, though not treatment, to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(IV) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(V) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(ii) "Authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

(16) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, or others.

(17) "Intermittent leave" means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy.

(18) "Next of kin of a covered servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

(19) "Outpatient status" means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(20) "Paraprofessional" means a school employee who performs duties that are instructional in nature or deliver either direct or indirect services to students and/or parents and serves in a position for which a teacher has ultimate responsibility for the design and implementation of educational programs and services.

(21) "Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in subdivision (26) of this section. This term does not include parents "in law."

(22) "Parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."

(23) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, and includes a public agency for purposes of this part.

(24) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, as defined in 29 CFR 630.

(25) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(26) "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under eighteen (18) years of age or eighteen (18) years of age or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

(27) "Son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(28) "Son or daughter on active duty or call to active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

(29) "Spouse" means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

(Effective May 12, 2014)

Sec. 31-51rr-2. Eligible employee (29 CFR § 825.110)

(a) An eligible employee is an employee of a covered employer who:

(1) Has been employed by the employer for at least twelve (12) months, and

(2) Has been employed for at least nine hundred fifty (950) hours of service during the twelve (12)-month period immediately preceding the commencement of the leave.

(b) The twelve (12) months an employee must have been employed by the employer need not be consecutive months, provided;

(1) Subject to the exceptions provided in subsection (b)(2) of this section, employment periods prior to a break in service of seven (7) years or more need not be counted in determining whether the employee has been employed by the employer for at least twelve (12) months.

(2) Employment periods preceding a break in service of more than seven (7) years shall be counted in determining whether the employee has been employed by the employer for at least twelve (12) months where:

(A) The employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.,* covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service shall be also counted in determining whether the employee has been employed for at least twelve (12) months by the employer. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA; or

(B) A written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service.

(3) If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave during which other benefits or compensation are provided by the employer, the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as at least twelve (12) months, fifty-two (52) weeks is deemed to be equal to twelve (12) months.

(4) Nothing in this section prevents employers from considering employment prior to a continuous break in service of more than seven (7) years when determining whether an employee has met the twelve (12)-month employment requirement. However, if an employer chooses to recognize such prior employment, the employer shall do so uniformly, with respect to all employees with similar breaks in service.

(c) (1) Except as provided in subsection (c)(2) of this section, whether an employee has worked the minimum nine hundred fifty (950) hours of service is determined according to the principles established under the FLSA for determining compensable hours of work. *See* 29 CFR part 785. The determining factor is the number of hours an employee has worked for the employer within the meaning of the FLSA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer. Any accurate accounting of actual hours worked under FLSA's principles may be used.

(2) An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employer added to any hours actually worked during the previous twelve (12)-month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule may be used for calculations.

(3) In the event an employer does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*see* bona fide executive, administrative, and professional employees as defined in FLSA Regulations, 29 CFR part 541), the employer has the burden of showing that the employee has not worked the requisite hours.

(4) The determination of whether an employee meets the hours of service requirement and has been employed by the employer for a total of at least twelve (12) months must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the twelve (12)-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA qualifying reason after the employee meets the eligibility requirement would be FMLA leave.

(Effective May 12, 2014)

Sec. 31-51rr-3. Qualifying reasons for leave, general rule (29 CFR § 825.112)

(a) **Circumstances qualifying for leave.** Employers covered by FMLA are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty in support of a contingency operation; and

(6) To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

(b) **Equal application.** The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, may take family leave for the birth, placement for adoption, or foster care of a child.

(c) **Active employee.** In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee shall be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

(Effective May 12, 2014)

Sec. 31-51rr-4. Serious health condition (29 CFR § 825.113)

(a) The term "incapacity" means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

(b) The term "treatment" includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes the taking of over-the-counter medications such as

aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

(Effective May 12, 2014)

Sec. 31-51rr-5. Inpatient care (29 CFR § 825.114)

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in section 31-51rr-4(a) of the Regulations of Connecticut State Agencies, or any subsequent treatment in connection with such inpatient care.

(Effective May 12, 2014)

Sec. 31-51rr-6. Continuing treatment (29 CFR § 825.115)

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(a) **Incapacity and treatment.** A period of incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) The requirement in subsections (a)(1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first or only in-person treatment visit shall take place within seven (7) days of the first day of incapacity.

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(5) The term "extenuating circumstances" in subsection (a)(1) of this section means circumstances beyond the employee's control that prevent the follow-up visit from occurring

as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty (30)-day period, but the health care provider does not have any available appointments during that time period.

(b) **Pregnancy or prenatal care.** Any period of incapacity due to pregnancy, or for prenatal care.

(c) **Chronic conditions.** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits, defined as at least twice a year, for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(2) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(3) May cause episodic rather than a continuing period of incapacity (including, but not limited to, asthma, diabetes, epilepsy).

(d) **Permanent or long-term conditions.** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member shall be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(e) **Conditions requiring multiple treatments.** Any period of absence to receive multiple treatments, including any period of recovery therefrom, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under subsection (b) or (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three (3) consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(Effective May 12, 2014)

Sec. 31-51rr-7. Leave for treatment of substance abuse (29 CFR § 825.119)

(a) Substance abuse may be a serious health condition if the conditions of sections 31-51rr-4 through 31-51rr-6, inclusive, of the Regulations of Connecticut State Agencies are

met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employer has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(Effective May 12, 2014)

Sec. 31-51rr-8. Leave for pregnancy or birth (29 CFR § 825.120)

(a) **General rules**. Eligible employees are entitled to FMLA leave for pregnancy or birth of a child as follows:

(1) Both the mother and father are entitled to FMLA leave for the birth of their child.

(2) Both the mother and father are entitled to FMLA leave to be with the healthy newborn child (bonding time) during the twelve (12)-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the twelve (12)-month period beginning on the date of the birth. If state law allows, or the employer permits, bonding leave to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, both the mother and father are entitled to FMLA leave even if the newborn does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of twelve (12) weeks of leave during any twelve (12)-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two different worksites of an employer. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full twelve (12) weeks of FMLA leave. Where the spouses both use a portion of the total twelve (12)-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount such spouses have taken individually and twelve (12) weeks for FMLA leave for other purposes. For example,

if each spouse took six (6) weeks of leave to care for a healthy, newborn child, each could use an additional six (6) weeks due to his or her own serious health condition or to care for a child with a serious health condition. Note, too, that many State pregnancy disability laws specify a period of disability either before or after the birth of a child; such periods would also be considered FMLA leave for a serious health condition of the mother, and would not be subject to the combined limit.

(4) The mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three (3) consecutive calendar days. For example, a pregnant employee may be unable to report to work because of severe morning sickness.

(5) A spouse is entitled to FMLA leave if needed to care for his or her pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for the spouse following the birth of a child if the spouse has a serious health condition.

(6) Both the mother and father are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of sections 31-51rr-4 through 31-51rr-6, inclusive, and 31-51rr-1(26) of the Regulations of Connecticut State Agencies are met. Thus, spouses may each take twelve (12) weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable twelve (12)-month FMLA leave period.

(b) **Intermittent and reduced schedule leave.** An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employer agrees. For example, an employer and employee may agree to a part-time work schedule after the birth. If the employer agrees to permit intermittent or reduced schedule leave for the birth of a child, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the ADA), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the mother or newborn child.

(Effective May 12, 2014)

Sec. 31-51rr-9. Leave for adoption or foster care (29 CFR § 825.121)

(a) **General rules**. Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child, whether from a licensed placement agency or otherwise, is not a factor in determining eligibility for leave for this purpose.

(2) An employee's entitlement to leave for adoption or foster care expires at the end of the twelve (12)-month period beginning on the date of the placement. If state law allows, or the employer permits, leave for adoption or foster care to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, the employee is entitled to FMLA leave even if the adopted or foster child does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of twelve (12) weeks of leave during any twelve (12)-month period if the leave is taken for the placement of the employee's son or daughter or to care for the child after placement, for the birth of the employee's son or daughter or to care for the child after birth, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full twelve (12) weeks of FMLA leave. Where the spouses both use a portion of the total twelve (12)-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount such spouses have taken individually and twelve (12) weeks for FMLA leave for other purposes. For example, if each spouse took six (6) weeks of leave to care for a healthy, newly placed child, each could use an additional six (6) weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) An eligible employee is entitled to FMLA leave in order to care for an adopted or foster child with a serious health condition if the requirements of sections 31-51rr-4 through 31-51rr-6, inclusive, and 31-51rr-1(26) of the Regulations of Connecticut State Agencies are met. Thus, spouses may each take twelve (12) weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable twelve (12)-month FMLA leave period.

(b) **Use of intermittent and reduced schedule leave.** An eligible employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employer agrees. Thus, for example, the employer and employee may agree to a part-time work schedule after the placement for bonding purposes. If the

employer agrees to permit intermittent or reduced schedule leave for the placement for adoption or foster care, the employer may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the ADA), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employer's agreement is not required for intermittent leave required by the serious health condition of the adopted or foster child.

(Effective May 12, 2014)

Sec. 31-51rr-10. Definitions of adoption and foster care (29 CFR § 825.122)

(a) **Adoption.** "Adoption" means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child, whether from a licensed placement agency or otherwise, is not a factor in determining eligibility for FMLA leave.

(b) **Foster care.** Foster care means twenty-four (24)-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(c) **Documenting relationships.** For purposes of confirmation of family relationship, the employer may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, or other similar documentation. The employer is entitled to examine documentation, but the employee is entitled to the return of the official document submitted for this purpose.

(Effective May 12, 2014)

Sec. 31-51rr-11. Unable to perform the functions of the position (29 CFR § 825.123)

(a) **Definition.** An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the ADA and the regulations at 29 CFR 1630.2(n). An employee who will be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(b) **Statement of functions.** An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification shall specify

what functions of the employee's position the employee is unable to perform so that the employer can then determine whether the employee is unable to perform one or more essential functions of the employee's position. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.

(Effective May 12, 2014)

Sec. 31-51rr-12. Needed to care for a family member or covered servicemember (29 CFR § 825.124)

(a) The medical certification provision that an employee is "needed to care for" a family member or covered servicemember encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes not only a situation where the condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

(Effective May 12, 2014)

Sec. 31-51rr-13. Leave because of a qualifying exigency (29 CFR § 825.126)

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status or has been notified of an impending call or order to covered active duty.

(1) *Covered active duty or call to covered active duty status* in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.

(2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United

States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least twenty (20) years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B).

(A) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to one of the provisions of law identified in subsection (a)(2) of this section.

(B) The active duty orders of a member of the Reserve components will generally specify if the military member is serving in support of a contingency operation by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(3) *Deployment of the member with the Armed Forces to a foreign country* means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(4) A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in subsection (a)(2) of this section.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.*

(A) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven (7) or less calendar days prior to the date of deployment;

(B) Leave taken for this purpose can be used for a period of seven (7) calendar days

beginning on the date the military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.*

(A) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and

(B) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For the purposes of leave for childcare and school activities listed in (A) through (D), inclusive, of this subdivision, a child of the military member shall be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under eighteen (18) years of age or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. As with all instances of qualifying exigency leave, the military member shall be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(A) To arrange for alternative childcare or a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(B) To provide childcare for a child of the military member on an urgent, immediate need basis, but not on a routine, regular, or everyday basis, when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(C) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(D) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.*

(A) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(B) To act as the military member's representative before a federal, state, or local agency

for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of ninety (90) days following the termination of the military member's covered active duty status;

(5) *Counseling.* To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under eighteen (18) years of age, or age eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;

(6) *Rest and Recuperation.*

(A) To spend time with the military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;

(B) Leave taken for this purpose can be used for a period of fifteen (15) calendar days beginning on the date the military member commences each instance of rest and recuperation leave;

(7) *Post-deployment activities.*

(A) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the military member's covered active duty status; and

(B) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Parental care.* For purposes of leave for parental care listed in subparagraphs (A) through (D), inclusive, of this subdivision, the parent of the military member shall be incapable of self-care and shall be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under eighteen (18) years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include, but are not limited to, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office. As with all instances of qualifying exigency leave, the military member shall be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(A) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;

(B) To provide care for a parent of the military member on an urgent, immediate need

basis, but not on a routine, regular, or everyday basis, when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(C) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(D) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings;

(9) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

(Effective May 12, 2014)

Sec. 31-51rr-14. Leave to care for a covered servicemember with a serious injury or illness (29 CFR § 825.127)

(a) Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.

(b) **Covered servicemember** means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness.

(2) A covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee shall commence leave to care for a covered veteran within five (5) years of the veteran's active duty service, but the single twelve (12)-month period described in subsection (e)(1) of this section may extend beyond the five (5)-year period.

(A) For an individual who was a member of the Armed Forces, including a member of the National Guard or Reserves, and who was discharged or released under conditions other than dishonorable prior to the effective date of this Final Rule, the period between October 28, 2009 and the effective date of this Final Rule shall not count towards the determination of the five (5) year period for covered veteran status.

(c) **A serious injury or illness** means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered

servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and

(2) In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

(A) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(B) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of fifty (50) percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(C) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(D) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(d) In order to care for a covered servicemember, an eligible employee shall be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(e) An eligible employee is entitled to twelve (12) workweeks of leave to care for a covered servicemember with a serious injury or illness during a single twelve (12)-month period.

(1) The single twelve (12)-month period described in subsection (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends twelve (12) months after that date, regardless of the method used by the employer to determine the employee's twelve (12) workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her twelve (12) workweeks of leave entitlement to care for a covered servicemember during this single twelve (12)-month period, the remaining part of his or her twelve (12) workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in subsection (e) of this section is to be applied on a per-covered servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of twelve (12) workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than twelve (12) workweeks of leave may be taken within any single twelve (12)-month period. An eligible employee may

take more than one period of twelve (12) workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single twelve (12)-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than twelve (12) workweeks of leave in each single twelve (12)-month period.

(3) An eligible employee is entitled to a combined total of twelve (12) workweeks of leave for any FMLA-qualifying reason during the single twelve (12)-month period described in subsection (e) of this section, provided that the employee is entitled to no more than twelve (12) workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employer is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in section 31-51rr-31 of the Regulations of Connecticut State Agencies. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single twelve (12)-month period described in subsection (e) of this section, the employer shall designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single twelve (12)-month period described in subsection (e) of this section shall not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employers may retroactively designate leave as leave to care for a covered servicemember pursuant to section 31-51rr-32(d) of the Regulations of Connecticut State Agencies.

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of twelve (12) workweeks of leave during the single twelve (12)-month period described in subsection (e) of this section if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer.

(Effective May 12, 2014)

Sec. 31-51rr-15. Amount of leave (29 CFR § 825.200)

(a) An eligible employee's FMLA leave entitlement is limited to a total of twelve (12) workweeks of leave during any twelve (12)-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job;

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; or

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

(b) An employer is permitted to choose any one of the following methods for determining the "twelve (12)-month period" in which the twelve (12) weeks of leave entitlement described in subsection (a) of this section occurs:

(1) The calendar year;

(2) Any fixed twelve (12)-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date;

(3) The twelve (12)-month period measured forward from the date any employee's first FMLA leave under subsection (a) begins; or,

(4) A "rolling" twelve (12)-month period measured backward from the date an employee uses any FMLA leave as described in subsection (a).

(c) Under methods in subsections (b)(1) and (b)(2) of this section an employee would be entitled to up to twelve (12) weeks of FMLA leave at any time in the fixed twelve (12)-month period selected. An employee could, therefore, take twelve (12) weeks of leave at the end of the year and twelve (12) weeks at the beginning of the following year. Under the method in subsection (b)(3) of this section, an employee would be entitled to twelve (12) weeks of leave during the year beginning on the first date FMLA leave is taken; the next twelve (12)-month period would begin the first time FMLA leave is taken after completion of any previous twelve (12)-month period. Under the method in subsection (b)(4) of this section, the "rolling" twelve (12)-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the twelve (12) weeks which has not been used during the immediately preceding twelve (12) months. For example, if an employee has taken eight (8) weeks of leave during the past twelve (12) months, an additional four (4) weeks of leave could be taken. If an employee used four (4) weeks beginning February 1, 2008, four (4) weeks beginning June 1, 2008, and four (4) weeks beginning December 1, 2008, the employee would not be entitled to any additional leave

until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four (4) weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009. Accordingly, employers using the rolling twelve (12)-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior twelve (12) months. For example, in the example above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2009, only the first four weeks of the leave would be FMLA-protected.

(d) Employers will be allowed to choose any one of the alternatives in subsection (b) of this section for the leave entitlements described in subsection (a) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to another alternative is required to give at least sixty (60) days notice to all employees, and the transition shall take place in such a way that the employees retain the full benefit of twelve (12) weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the FMLA's leave requirements.

(e) If an employer fails to select one of the options in subsection (b) of this section for measuring the twelve (12)-month period for the leave entitlements described in subsection (a) of this section, the option that provides the most beneficial outcome for the employee will be used. The employer may subsequently select an option only by providing the sixty (60)-day notice to all employees of the option the employer intends to implement. During the running of the sixty (60)-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the sixty (60)-day period the employer may implement the selected option.

(f) An eligible employee's FMLA leave entitlement is limited to a total of twelve (12) workweeks of leave during a "single twelve (12)-month period" to care for a covered servicemember with a serious injury or illness. An employer shall determine the "single twelve (12)-month period" in which the twelve (12) weeks-of-leave-entitlement described in this subsection occurs using the twelve (12)-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.

(g) During the "single twelve (12)-month period" described in subsection (f) of this section, an eligible employee's FMLA leave entitlement is limited to a combined total of twelve (12) workweeks of FMLA leave for any qualifying reason.

(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA

entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (for example, a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement.

(Effective May 12, 2014)

Sec. 31-51rr-16. Leave to care for a parent (29 CFR § 825.201)

(a) **General rule.** An eligible employee is entitled to FMLA leave if needed to care for the employee's parent with a serious health condition. Care for parents-in-law is not covered by the FMLA.

(b) **"Same employer" limitation.** Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of twelve (12) weeks of leave during any twelve (12)-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as spouses are employed by the same employer. It would apply, for example, even though the spouses are employed at two different worksites of an employer. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full twelve (12) weeks of FMLA leave. Where the spouses both use a portion of the total twelve (12)-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount each spouse has taken individually and twelve (12) weeks for FMLA leave for other purposes. For example, if each spouse took six (6) weeks of leave to care for a parent, each could use an additional six (6) weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(Effective May 12, 2014)

Sec. 31-51rr-17. Intermittent leave or reduced leave schedule (29 CFR § 825.202)

(a) **Definition.** FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason.

(b) **Medical necessity.** For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there shall be a medical need for leave and it shall be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition

and in the certification of a serious injury or illness, if required by the employer, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition or of a covered servicemember's serious injury or illness, or for recovery from treatment or recovery from a serious health condition or a covered servicemember's serious injury or illness. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered servicemember with a serious injury or illness.

(1) Intermittent leave may be taken for a serious health condition of a parent, son, or daughter, for the employee's own serious health condition, or a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she does not receive treatment by a health care provider.

(c) **Birth or placement.** When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Such a schedule reduction might occur, for example, where an employee, with the employer's agreement, works part-time after the birth of a child, or takes leave in several segments. The employer's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(d) **Qualifying exigency.** Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

(Effective May 12, 2014)

Sec. 31-51rr-18. Scheduling of intermittent or reduced schedule leave (29 CFR § 825.203)

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when

necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

(Effective May 12, 2014)

Sec. 31-51rr-19. Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave (29 CFR § 825.204)

(a) **Transfer or reassignment.** If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one's own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicemember, or if the employer agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employer may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

(b) **Compliance.** Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the ADA), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced schedule leave.

(c) **Equivalent pay and benefits.** The alternative position shall have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce benefits such as vacation leave where an employer's normal practice is to base such benefits on the number of hours worked.

(d) **Employer limitations.** An employer may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on

the part of the employer to make such a transfer will be held to be contrary to the prohibited acts of the FMLA.

(e) **Reinstatement of employee.** When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee shall be placed in the same or equivalent job as the job he or she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

(Effective May 12, 2014)

Sec. 31-51rr-20. Increments of FMLA leave for intermittent or reduced schedule leave (29 CFR § 825.205)

(a) **Minimum increment**.

(1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employer shall account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employer may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. If an employer uses different increments to account for different types of leave, the employer shall account for FMLA leave in the smallest increment used to account for any other type of leave. For example, if an employer accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then FMLA leave use shall be accounted for using increments no larger than one-half hour. If an employer accounts for use of leave in varying increments at different times of the day or shift, the employer may also account for FMLA leave in varying increments, provided that the increment used for FMLA leave is no greater than the smallest increment used for any other type of leave during the period in which the FMLA leave is taken. If an employer accounts for other forms of leave use in increments greater than one hour, the employer shall account for FMLA leave use in increments no greater than one hour. An employer may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employer that accounts for other forms of leave in one hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employer wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances. In all cases, employees may not be charged FMLA leave for periods during which they are working.

(2) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where

a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed ''clean room'' during a certain period of time and no equivalent position is available, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period during which the employer is unable to permit the employee to work prior to a period of FMLA leave or return the employee to the same or equivalent position due to the physical impossibility after a period of FMLA leave.

(b) **Calculation of leave**.

(1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who would otherwise work forty (40) hours a week takes off eight (8) hours, the employee would use one-fifth (1⁄5) of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work eight (8) hour days works four (4)-hour days under a reduced leave schedule, the employee would use one-half (1⁄2) week of FMLA leave. Where an employee works a part-time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a pro rata or proportional basis. If an employee who would otherwise work thirty (30) hours per week, but works only twenty (20) hours a week under a reduced leave schedule, the employee's ten (10) hours of leave would constitute one-third (1⁄3) of a week of FMLA leave for each week the employee works the reduced leave schedule. An employer may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours. An employee does not accrue FMLA-protected leave at any particular hourly rate. An eligible employee is entitled to up to a total of twelve (12) workweeks of leave, and the total number of hours contained in those workweeks is necessarily dependent on the specific hours the employee would have worked but for the use of leave.

(2) If an employer has made a permanent or long-term change in the employee's schedule for reasons other than FMLA, and prior to the notice of need for FMLA leave, the hours worked under the new schedule are to be used for making this calculation.

(3) If an employee's schedule varies from week to week to such an extent that an employer is unable to determine with any certainty how many hours the employee would otherwise have worked but for the taking of FMLA leave, a weekly average of the hours scheduled over the twelve (12) months prior to the beginning of the leave period, including any hours for which the employee took leave of any type, would be used for calculating the employee's leave entitlement.

(c) **Overtime.** If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be

required to work for forty-eight (48) hours in a particular week, but due to a serious health condition the employee is unable to work more than forty (40) hours that week, the employee would utilize eight hours of FMLA-protected leave out of the forty-eight (48)-hour workweek, or one-sixth (1⁄6) of a week of FMLA leave. Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

(Effective May 12, 2014)

Sec. 31-51rr-21. Substitution of paid leave (29 CFR § 825.207)

(a) Generally, FMLA leave is unpaid leave. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term "substitute" means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. When an employee chooses, or an employer requires, substitution of accrued paid leave, the employer must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. If an employee does not comply with the additional requirements in an employer's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid FMLA leave. Employers may not discriminate against employees on FMLA leave in the administration of their paid leave policies.

(b) If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition or serious injury or illness does not count against the employee's FMLA leave entitlement.

(d) Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if it meets the criteria set forth above in sections 31-51rr-3 to 31-51rr-6, inclusive, of the Regulations of Connecticut State Agencies. In such cases, the employer may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee

nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds (2/3) of an employee's salary.

(e) The Act provides that a serious health condition may result from injury to the employee "on or off" the job. If the employer designates the leave as FMLA leave in accordance with section 31-51rr-31(d) of the Regulations of Connecticut State Agencies, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, the provision for substitution of the employee's accrued paid leave is not applicable, and neither the employee nor the employer may require the substitution of paid leave. However, employers and employees may agree, where state law permits, to have paid leave supplement workers' compensation benefits, such as in the case where workers' compensation only provides replacement income for two-thirds (2/3) of an employee's salary. If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employer's offer of a "light duty job." As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employer may require the use of accrued paid leave.

(f) Section 7(o) of the FLSA and state law permit public employers under prescribed circumstances to substitute compensatory time off accrued at one and one-half hours for each overtime hour worked in lieu of paying cash to an employee when the employee works overtime hours as prescribed by the Act. This section of the FLSA limits the number of hours of compensatory time an employee may accumulate depending upon whether the employee works in fire protection or law enforcement (480 hours) or elsewhere for a public agency (240 hours). In addition, under the FLSA, an employer always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employer requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

(Effective May 12, 2014)

Sec. 31-51rr-22. Maintenance of employee benefits (29 CFR § 825.209)

(a) During any FMLA leave, an employer must maintain the employee's coverage under any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employers covered by FMLA, including public agencies, are subject to the Act's requirements to maintain health coverage. For purposes of FMLA, the term "group health plan" shall not include an

insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employer;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, and the like, must be maintained during leave if provided in an employer's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employer changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes, which apply to all employees of the workforce, would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employer.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions or other such restrictions.

(f) Except as required by COBRA, an employer's obligation to maintain health benefits during leave and to restore the employee to the same or equivalent employment under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (for example, if the employee's position is eliminated

as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employer of his or her intent not to return from leave, including before starting the leave if the employer is so informed before the leave starts; or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the twelve (12)-month period.

(g) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave, such as holiday pay, is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave, paid or unpaid, as appropriate.

(Effective May 12, 2014)

Sec. 31-51rr-23. Employee payment of group health benefit premiums (29 CFR § 825.210)

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employer's group health plan are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employer has a number of options for obtaining payment from the employee. The employer may require that payment be made to the employer or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employer may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employer's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment, prior to the commencement of the leave, of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or

(5) Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums, such as through increased payroll deductions when the need for the FMLA leave is foreseeable.

(d) The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made.

(e) An employer may not require more of an employee using unpaid FMLA leave than the employer requires of other employees on "leave without pay."

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employer for payment of group health plan benefits when simultaneously taking FMLA leave.

(Effective May 12, 2014)

Sec. 31-51rr-24. Maintenance of benefits under multi-employer health plans (29 CFR § 825.211)

(a) A multi-employer health plan is a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

(b) An employer under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use "banked" hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in section 31-51rr-22(f) of the Regulations of Connecticut State Agencies of this part, group health plan coverage must be maintained for an employee on FMLA leave until:

(1) The employee's FMLA leave entitlement is exhausted;

(2) The employer can show that the employee would have been laid off and the employment relationship terminated; or

(3) The employee provides unequivocal notice of intent not to return to work.

(Effective May 12, 2014)

Sec. 31-51rr-25. Employee failure to pay health plan premium payments (29 CFR § 825.212)

(a) (1) In the absence of an established employer policy providing a longer grace period, an employer's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than thirty (30) days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least fifteen (15) days before coverage is to cease, advising that

coverage will be dropped on a specified date at least fifteen (15) days after the date of the letter unless the payment has been received by that date. If the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, the employer may drop the employee from coverage retroactively in accordance with that policy, provided the fifteen (15)-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the thirty (30)-day grace period, where the required fifteen (15)-day notice has been provided.

(2) An employer has no obligation regarding the maintenance of a health insurance policy which is not a "group health plan."

(3) All other obligations of an employer under FMLA would continue; for example, the employer continues to have an obligation to reinstate an employee upon return from leave.

(b) The employer may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employer maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

(Effective May 12, 2014)

Sec. 31-51rr-26. Employer recovery of benefit costs (29 CFR § 825.213)

(a) In addition to the circumstances discussed in section 31-51rr-25(b) of the Regulations of Connecticut State Agencies, an employer may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than

seventy-five (75) miles from the employee's worksite; a relative or individual other than a covered family member has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, thereby precluding the employer from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employer may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. Such certification is not required unless requested by the employer. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within thirty (30) days from the date of the employer's request. For purposes of medical certification, the employee may use the optional Labor Department forms developed for these purposes (*see* Appendix B of this part). If the employer requests medical certification and the employee does not provide such certification in a timely manner or within thirty (30) days, or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employer may recover one hundred (100) percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employer may elect to maintain other benefits, such as life insurance or disability insurance, by paying the employee's share of premiums during periods of unpaid FMLA leave. For example, to ensure the employer can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employer elects to maintain such benefits during the leave, at the conclusion of leave, the employer is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least thirty (30) calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first thirty (30) days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employer requires paid leave to be substituted for FMLA leave, the employer may not recover its share of health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities, including workers' compensation, is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employers may recover is limited to only the employer's share of allowable "premiums" as would be calculated under COBRA, excluding the two (2) percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employer to recover are a debt owed by the non-returning employee to the employer. The existence of this debt caused by the employee's failure to return to work does not alter the employer's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employer may recover the costs through deduction from any sums due to the employee, such as unpaid wages, vacation pay, and profit sharing, provided such deductions do not otherwise violate applicable Federal or State wage payment or other laws. Alternatively, the employer may initiate legal action against the employee to recover such costs.

(Effective May 12, 2014)

Sec. 31-51rr-27. Employee right to reinstatement (29 CFR § 825.214)

General rule. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.

(Effective May 12, 2014)

Sec. 31-51rr-28. Equivalent position (29 CFR § 825.215)

(a) **Equivalent position.** An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) **Conditions to qualify.** If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) **Equivalent pay.**

(1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten (10) hours of overtime and

corresponding overtime pay each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary, made to employees consistent with the provisions of subsection (c)(1) of this section. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

(d) **Equivalent benefits.** "Benefits" include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in Section 3(3) of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began, including family or dependent coverages. For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employers may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave.

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, such as paid vacation, sick or personal leave to the extent not substituted for FMLA leave, however, must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employer is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employer has no established policy, the employee and the employer are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example, if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost.

(e) **Equivalent terms and conditions of employment**. An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employer transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employer to accept a different position against the employee's wishes.

(f) **De minimis exception.** The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

(Effective May 12, 2014)

Sec. 31-51rr-29. Limitations on an employee's right to reinstatement (29 CFR § 825.216)

(a) An employee has no greater right to reinstatement or to other benefits and conditions

of employment than if the employee had been continuously employed during the FMLA leave period. An employer shall be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employer's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee cease at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise. An employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration. Restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer.

(b) In addition to the circumstances explained above, an employer may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work.

(c) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA. The employer's obligations may, however, be governed by the ADA, as amended, or the CFEPA.

(d) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

(e) If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was fraudulently obtained as in subsection (d) of this section.

(Effective May 12, 2014)

Sec. 31-51rr-30. Protection for employees who request leave or otherwise assert FMLA rights (29 CFR § 825.220)

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of or attempts to exercise any rights provided by the Act.

(2) An employer is prohibited from discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the Act.

(3) All persons, whether or not employers, are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, because that person has:

(A) Filed any charge, or has instituted or caused to be instituted any proceeding under or related to this Act;

(B) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Act; or

(C) Testified, or is about to testify, in any inquiry or proceeding relating to a right under this Act.

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under FMLA, for example:

(1) Changing the essential functions of the job in order to preclude the taking of leave; or

(2) Reducing hours available to work in order to avoid employee eligibility.

(c) The Act's prohibition against "interference" prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits, other than health benefits, the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA. For example, employees or their collective bargaining

representatives cannot "trade off" the right to take FMLA leave against some other benefit offered by the employer. This does not prevent the settlement or release of FMLA claims by employees based on past employer conduct without the approval of the Labor Department, or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance, which is not as a condition of employment, of a "light duty" assignment while recovering from a serious health condition. An employee's acceptance of such "light duty" assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable twelve (12)-month FMLA leave year.

(e) Individuals, and not merely employees, are protected from retaliation for opposing any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations.

(Effective May 12, 2014)

Sec. 31-51rr-31. Employer notice requirements (29 CFR § 825.300)

(a) **General notice**.

(1) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of alleged violations of section 31-51rr of the Connecticut General Statutes with the Labor Department. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. Employers can comply with this requirement by posting the notice provided in Appendix B.

(2) Covered employers must post this general notice even if no employees are eligible for FMLA leave.

(3) If an FMLA-covered employer has any eligible employees, it shall also provide this general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

(4) To meet the requirements of subsection (a)(3) of this section, employers may duplicate the text of the notice contained in Appendix B or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice. Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under Federal or

State law.

(b) **Eligibility notice**.

(1) When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. Employee eligibility is determined and notice must be provided at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable twelve (12)-month period. All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable twelve (12)-month period.

(2) The eligibility notice shall state whether the employee is an eligible employee, as described in section 31-51rr-2(a) of the Regulations of Connecticut State Agencies. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, and the number of hours of service worked for the employer during the twelve (12)-month period. Notification of eligibility may be oral or in writing; employers may use the form referenced in Appendix A to provide such notification to employees. The employer is obligated to translate this notice in any situation in which it is obligated to do so.

(3) If an employee provides notice of a subsequent need for FMLA leave during the applicable twelve (12)-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed, such as if the employee has worked less than nine hundred fifty (950) hours of service for the employer in the twelve (12) months preceding the commencement of leave for the subsequent qualifying reason, the employer must notify the employee of the change in eligibility status within five (5) business days, absent extenuating circumstances.

(c) **Rights and responsibilities notice**.

(1) Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The employer may use the form referenced in Appendix A. The employer is obligated to translate this notice in any situation in which it is obligated to do so. This notice shall be provided to the employee each time the eligibility notice is provided pursuant to subsection (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

(A) That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying and the applicable twelve (12)-month period for FMLA entitlement;

(B) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so;

(C) The employee's right to substitute paid leave, whether the employer will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave;

(D) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences, such as the circumstances under which coverage may lapse, of failure to make such payments on a timely basis;

(E) The employee's rights to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave; and

(F) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

(2) The notice of rights and responsibilities may include other information, such as whether the employer will require periodic reports of the employee's status and intent to return to work, but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities changes, the employer shall, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(5) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

(6) A prototype notice of rights and responsibilities is referenced in Appendix A; the prototype may be obtained from the U.S. Department of Labor's website. Employers may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements of this section.

(d) **Designation notice**.

(1) The employer is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employer has enough information to determine whether the leave is being taken for a FMLA-qualifying reason, such as after receiving a certification, the employer must notify the employee whether the leave will be designated and will be counted as FMLA leave within five (5) business days absent extenuating circumstances. The employer may use the form referenced in Appendix A. Only one notice of designation is required for each FMLA-qualifying reason per applicable twelve (12)-month period, regardless of whether

the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employer determines that the leave will not be designated as FMLA-qualifying, such as if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted, the employer must notify the employee of that determination. If the employer requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employer must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employer has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time.

(3) If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice. If the employer will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employer must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. If the employer handbook or other written documents, if any, describing the employer's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances, such as by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation, the employer is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice is referenced in Appendix A; the prototype designation notice may be obtained from the U.S. Department of Labor's website. If the leave is not designated as FMLA leave because it does not meet the requirements of section 31-51rr of the Connecticut General Statutes, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employer to the employee in the designation notice changes, such as when the employee exhausts the FMLA leave entitlement, the employer shall provide, within five (5) business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employer must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employer designates the leave as FMLA-qualifying, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement, such as in the case of unforeseeable intermittent leave, then the employer must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the

request by the employee, but no more often than once in a thirty (30)-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing, no later than the following payday, unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday. Such written notice may be in any form, including a notation on the employee's pay stub.

(e) **Consequences of failing to provide notice**. Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered.

(Effective May 12, 2014)

Sec. 31-51rr-32. Designation of FMLA leave (29 CFR § 825.301)

(a) **Employer responsibilities.** The employer's decision to designate leave as FMLA-qualifying shall be based only on information received from the employee or the employee's spokesperson, such as if the employee is incapacitated, the employee's spouse, adult child, parent, or doctor, may provide notice to the employer of the need to take FMLA leave. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the employer shall inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying. Once the employer has acquired knowledge that the leave is being taken for a FMLA-qualifying reason, the employer shall notify the employee as provided in section 31-51rr-31(d) of the Regulations of Connecticut State Agencies.

(b) **Employee responsibilities.** An employee giving notice of the need for FMLA leave does not need to expressly assert rights under section 31-51rr of the Connecticut General Statutes or even mention the FMLA to meet his or her obligation to provide notice, though the employee needs to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in sections 31-51rr-33 or 31-51rr-34 of the Regulations of Connecticut State Agencies depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for FMLA leave shall explain the reasons for the needed leave so as to allow the employer to determine whether the leave qualifies under the Act. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employer to designate the leave as FMLA leave. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a FMLA-qualifying reason does not explain the reason for the leave and the employer denies the employee's

request, the employee will need to provide sufficient information to establish a FMLA-qualifying reason for the needed leave so that the employer is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against the employee's FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the FMLA-qualifying reason against the employee's FMLA leave entitlement.

(c) **Disputes.** If there is a dispute between an employer and an employee as to whether leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employer. Such discussions and the decision shall be documented.

(d) **Retroactive designation.** If an employer does not designate leave as required by section 31-51rr-31 of the Regulations of Connecticut State Agencies, the employer may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by section 31-51rr-31 of the Regulations of Connecticut State Agencies provided that the employer's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employer and an employee may mutually agree that leave be retroactively designated as FMLA leave.

(e) **Remedies.** If an employer's failure to timely designate leave in accordance with section 31-51rr-31 of the Regulations of Connecticut State Agencies causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. An employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. For example, if an employer that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employer's actions. However, if an employee took leave to provide care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned to later use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employer's failure to designate properly. The employee may establish this by showing that he or she would have arranged for an alternative caregiver for the seriously-ill son or daughter if the leave had been designated timely.

(Effective May 12, 2014)

Sec. 31-51rr-33. Employee notice requirements for foreseeable FMLA leave (29 CFR § 825.302)

(a) **Timing of notice.** An employee must provide the employer at least thirty (30) days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If thirty (30) days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice shall be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least thirty (30) days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employer for such information.

(b) **As soon as practicable** means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance, it may be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice shall take into account the individual facts and circumstances.

(c) **Content of notice.** An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a covered military member is on active duty or call to active duty status, and that the requested leave is for one of the reasons listed in section 31-51rr-13(a) of the Regulations of Connecticut State Agencies; if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason, for which the employer has previously provided FMLA-

protected leave, the employee shall specifically reference the qualifying reason for leave or the need for FMLA leave. In all cases, the employer may inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. An employer may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employer may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.

(d) **Complying with employer policy.** An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employer's policy to contact a specific individual. Unusual circumstances would include situations such as when an employee is unable to comply with the employer's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of his or her need for FMLA leave there is no one to answer the call-in number and the voice mail box is full. Where an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied. However, FMLA-protected leave may not be delayed or denied where the employer's policy requires notice to be given sooner than set forth in subsection (a) of this section and the employee provides timely notice as set forth in subsection (a) of this section.

(e) **Scheduling planned medical treatment.** When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. For example, if an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employer to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(f) Intermittent leave or leave on a reduced leave schedule shall be medically necessary

due to a serious health condition or a serious injury or illness. An employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(g) An employer may waive employees' FMLA notice requirements.

(Effective May 12, 2014)

Sec. 31-51rr-34. Employee notice requirements for unforeseeable FMLA leave (29 CFR § 825.303)

(a) **Timing of notice.** When the approximate timing of the need for leave is not foreseeable, an employee shall provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. It generally may be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employer's usual and customary notice requirements applicable to such leave. Notice may be given by the employee's spokesperson, such as a spouse, adult family member, or other responsible party, if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee would not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee is expected to call the employer promptly after ensuring the child has used the inhaler.

(b) **Content of notice.** An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a covered military member is on active duty or call to active duty status, that the requested leave is for one of the reasons listed in section 31-51rr-13(a) of the Regulations of Connecticut State Agencies, and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a qualifying reason, for which the employer has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in "sick" without providing more information will not be

considered sufficient notice to trigger an employer's obligations under the Act. The employer will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employer inquiries regarding the leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.

(c) **Complying with employer policy.** When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employer may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the call-in procedure until his or her condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a FMLA-qualifying reason, written advance notice pursuant to an employer's internal rules and procedures may not be required when FMLA leave is involved. If an employee does not comply with the employer's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

(Effective May 12, 2014)

Sec. 31-51rr-35. Employee failure to provide notice (29 CFR § 825.304)

(a) **Proper notice required.** In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employer's proper posting of the required notice (*see* Appendix B) at the worksite where the employee is employed and the employer's provision of the required notice in either an employee handbook or employee distribution.

(b) **Foreseeable leave—thirty (30) days.** When the need for FMLA leave is foreseeable at least thirty (30) days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employer may delay FMLA coverage until thirty (30) days after the date the employee provides notice. The need for leave and the approximate date leave would be taken shall have been clearly foreseeable to the employee thirty (30) days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable thirty (30) days in advance.

(c) **Foreseeable leave—less than thirty (30) days.** When the need for FMLA leave is foreseeable fewer than thirty (30) days in advance and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employer may delay FMLA coverage for leave depends on the facts of the particular case. For example, if an employee reasonably should have given the employer two (2) weeks notice but instead only provided one week notice, then the employer may delay FMLA-

protected leave for one week. Thus, if the employer elects to delay FMLA coverage and the employee nonetheless takes leave one week after providing the notice, such as a week before the two week notice period has been met, the leave will not be FMLA-protected.

(d) **Unforeseeable leave.** When the need for FMLA leave is unforeseeable and an employee fails to give notice in accordance with section 31-51rr-34 of the Regulations of Connecticut State Agencies, the extent to which an employer may delay FMLA coverage for leave depends on the facts of the particular case. For example, if it may have been practicable for an employee to have given the employer notice of the need for leave very soon after the need arises consistent with the employer's policy, but instead the employee provided notice two (2) days after the leave began, then the employer may delay FMLA coverage of the leave by two (2) days.

(e) **Waiver of notice.** An employer may waive employees' FMLA notice obligations or the employer's own internal rules on leave notice requirements. If an employer does not waive the employee's obligations under its internal leave rules, the employer may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave and the rules are not inconsistent with section 31-51rr-34(a) of the Regulations of Connecticut State Agencies.

(Effective May 12, 2014)

Sec. 31-51rr-36. Certification, general rule (29 CFR § 825.305)

(a) **General.** An employer may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employer may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification. An employer must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by section 31-51rr-31(c) of the Regulations of Connecticut State Agencies. An employer's oral request to an employee to furnish any subsequent certification is sufficient.

(b) **Timing.** In most cases, the employer should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five (5) business days thereafter, or, in the case of unforeseen leave, within five (5) business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employer within fifteen (15) calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employer

provides more than fifteen (15) calendar days to return the requested certification.

(c) **Complete and sufficient certification.** The employee must provide a complete and sufficient certification to the employer if required by the employer in accordance with sections 31-51rr-37, 31-51rr-40 and 31-51rr-41 of the Regulations of Connecticut State Agencies. The employer shall advise an employee whenever the employer finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employer shall provide the employee with seven (7) calendar days, unless not practicable under the particular circumstances despite the employee's diligent good faith efforts, to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted certification, the employer may deny the taking of FMLA leave. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(d) **Consequences.** At the time the employer requests certification, the employer shall also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employer with a complete and sufficient certification, despite the opportunity to cure the certification as provided in subsection (c) of this section, or fails to provide any certification, the employer may deny the taking of FMLA leave. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employer to support the employee's FMLA request. This provision will apply in any case where an employer requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient.

(e) **Annual medical certification.** Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year, the employer may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in section 31-51rr-38 of the Regulations of Connecticut State Agencies, including second and third opinions.

(Effective May 12, 2014)

Sec. 31-51rr-37. Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member (29 CFR § 825.306)

(a) **Required information.** When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employer may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

(2) The approximate date on which the serious health condition commenced, and its probable duration;

(3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts shall be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment, or any other regimen of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability;

(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, and an estimate of the frequency and duration of the leave required to care for the family member;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;

(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

(b) The United States Department of Labor has developed two optional forms (Form WH–380E and Form WH–380F, as revised) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. (The employer may use the form referenced in Appendix A). Optional form WH–380E is for use when the employee's need for leave is due to the

employee's own serious health condition. Political subdivisions may use the same forms for FMLA certification requirements that they utilize for employees that qualify for federal FMLA (by working 1250 hours in the year immediately preceding the leave). Optional form WH–380F is for use when the employee needs leave to care for a family member with a serious health condition. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Form WH–380E and WH–380F, as revised, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in sections 31-51rr-37, 31-51rr-38 and 31-51rr-39 of the Regulations of Connecticut State Agencies. In all instances the information on the form shall relate only to the serious health condition for which the current need for leave exists.

(c) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to request additional information from the employee's workers' compensation health care provider, the FMLA does not prevent the employer from following the workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to FMLA-protected leave. Similarly, an employer may request additional information in accordance with a paid leave policy or disability plan that requires greater information to qualify for payments or benefits, provided that the employer informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. Any information received pursuant to such policy or plan may be considered in determining the employee's entitlement to FMLA-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid FMLA leave.

(d) If an employee's serious health condition may also be a disability within the meaning of the ADA, as amended, or CFEPA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA or CFEPA. Any information received pursuant to these procedures may be considered in determining the employee's entitlement to FMLA-protected leave.

(e) While an employee may choose to comply with the certification requirement by providing the employer with an authorization, release, or waiver allowing the employer to communicate directly with the health care provider of the employee or his or her covered family member, the employee shall not be required to provide such an authorization, release, or waiver. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave.

(Effective May 12, 2014)

Sec. 31-51rr-38. Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions (29 CFR § 825.307)

(a) **Clarification and authentication.** If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. However, the employer may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employer has given the employee an opportunity to cure any deficiencies as set forth in section 31-51rr-36(c) of the Regulations of Connecticut State Agencies. To make such contact, the employer shall use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider. For purposes of these regulations, "authentication" means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested. "Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employers may not ask health care providers for additional information beyond that required by the certification form. The requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (*see* 45 CFR parts 160 and 164), which governs the privacy of individually-identifiable health information created or held by HIPAA-covered entities, shall be satisfied when individually-identifiable health information of an employee is shared with an employer by a HIPAA-covered health care provider. If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear. It is the employee's responsibility to provide the employer with a complete and sufficient certification and to clarify the certification if necessary.

(b) **Second opinion**.

(1) An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employer's established leave policies. In addition, the consequences set forth in section 31-51rr-36(d) of the Regulations of Connecticut State Agencies will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested

by the health care provider designated to provide a second opinion in order to render a sufficient and complete second opinion.

(2) The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited, such as a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity.

(c) **Third opinion.** If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith. In addition, the consequences set forth in section 31-51rr-36(d) of the Regulations of Connecticut State Agencies will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a third opinion in order to render a sufficient and complete third opinion.

(d) **Copies of opinions.** The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five (5) business days unless extenuating circumstances prevent such action.

(e) **Travel expenses.** If the employer requires the employee to obtain either a second or third opinion the employer must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) **Medical certification abroad.** In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English,

the employee must provide the employer with a written translation of the certification upon request.

(Effective May 12, 2014)

Sec. 31-51rr-39. Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member (29 CFR § 825.308)

(a) **Thirty (30)-day rule.** An employer may request recertification no more often than every thirty (30) days and only in connection with an absence by the employee, unless subsections (b) or (c) of this section apply.

(b) **More than thirty (30) days.** If the medical certification indicates that the minimum duration of the condition is more than thirty (30) days, an employer must wait until that minimum duration expires before requesting a recertification, unless subsection (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for forty (40) days, the employer must wait forty (40) days before requesting a recertification. In all cases, an employer may request a recertification of a medical condition every six (6) months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six (6) months, such as for a lifetime condition, the employer would be permitted to request recertification every six (6) months in connection with an absence.

(c) **Less than thirty (30) days.** An employer may request recertification in less than thirty (30) days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly, such as the duration or frequency of the absence, the nature or severity of the illness, or complications. For example, if a medical certification stated that an employee would need leave for one (1) to two (2) days when the employee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four (4) days each, then the increased duration of absence might constitute a significant change in circumstances allowing the employer to request a recertification in less than thirty (30) days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every thirty (30) days; or

(3) The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four (4) weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information may be sufficient to cast doubt upon the continuing validity of the certification allowing the employer to request a

recertification in less than thirty (30) days.

(d) **Timing.** The employee must provide the requested recertification to the employer within the timeframe requested by the employer, which must allow at least fifteen (15) calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) **Content.** The employer may ask for the same information when obtaining recertification as that permitted for the original certification. The employee has the same obligations to participate and cooperate, including providing a complete and sufficient certification or adequate authorization to the health care provider, in the recertification process as in the initial certification process. As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employer may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) Any recertification requested by the employer shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on recertification may be required.

(Effective May 12, 2014)

Sec. 31-51rr-40. Certification for leave taken because of a qualifying exigency (29 CFR § 825.309)

(a) **Active Duty Orders.** The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status or notification of an impending call or order to covered active duty of a military member, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military may be required by the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status or notification of an impending call or order to covered active duty of the same or a different military member;

(b) **Required information.** An employer may require that leave for any qualifying exigency specified in section 31-51rr-13 of the Regulations of Connecticut State Agencies be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts shall be sufficient to support the need for leave. Such facts shall include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a

meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency involves *Rest and Recuperation* leave, a copy of the military member's rest and recuperation orders, or other documentation issued by the military which indicates that the military member has been granted rest and recuperation leave, and the dates of the military member's rest and recuperation leave.

(c) The United States Department of Labor has developed an optional form (Form WH–384) for employees' use in obtaining a certification that meets FMLA's certification requirements. (The employer may use the form referenced in Appendix A). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Form WH–384, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section.

(d) **Verification.** If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the employer may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the employer may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employer. An employer also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status or has been notified of an impending call or order to covered active duty; no additional information may be requested and the employee's permission is not required.

(Effective May 12, 2014)

Sec. 31-51rr-41. Certification for leave taken to care for a covered servicemember (military caregiver leave) (29 CFR § 825.310)

(a) **Required information from health care provider.** When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense (DOD) health care provider;

(2) A United States Department of Veterans Affairs (VA) health care provider;

(3) A DOD TRICARE network authorized private health care provider;

(4) A DOD non-network TRICARE authorized private health care provider; or

(5) Any health care provider as defined in section 31-51rr-1(15) of the Regulations of Connecticut State Agencies.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative, such as a DOD Recovery Care Coordinator, or an authorized VA representative. An employer may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information, such as telephone number, fax number, and/or email address, of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:

(A) A DOD health care provider;

(B) A VA health care provider;

(C) A DOD TRICARE network authorized private health care provider;

(D) A DOD non-network TRICARE authorized private health care provider; or

(E) A health care provider as defined in section 31-51rr-1(15) of the Regulations of Connecticut State Agencies.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;

(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration; and

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.

(A) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy.

(B) In the case of a covered veteran, such medical facts shall include:

(i) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of fifty (50) percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in section 31-51rr-12 of the Regulations of Connecticut State Agencies, and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments; or

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment, whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) **Required information from employee and/or covered servicemember**. In addition to the information that may be requested under subsection (b) of this section, an employer may also request that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employer of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the Armed Forces, the

National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients, such as a medical hold or warrior transition unit, and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list;

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employer may require the employee to provide documentation issued by the military which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employer requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status; and

(7) A description of the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care.

(d) The United States Department of Labor has developed optional forms (WH–385, WH–385–V) for employees' use in obtaining certification that meets FMLA's certification requirements. (The employer may use the form referenced in Appendix A). These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember with a serious injury or illness. WH–385, WH–385–V, or another form containing the same basic information, may be used by the employer; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An employer may seek authentication and/ or clarification of the certification under section 31-51rr-38 of the Regulations of Connecticut State Agencies. Second and third opinions under section 31-51rr-38 of the Regulations of Connecticut State Agencies are not permitted for leave to care for a covered servicemember when the certification has been completed by one of the types of health care providers identified in section 31-51rr-41(a)(1) to 31-51rr-41(a)(4), inclusive, of the Regulations of Connecticut State Agencies. However, second and third opinions under section 31-51rr-38 of the Regulations of Connecticut State Agencies are permitted when the certification has been completed by a health care provider as defined in section 31-51rr-1(15) of the Regulations of Connecticut State Agencies that is not one of the types identified in section 31-51rr-41(a)(1)–(4) of the Regulations of Connecticut State Agencies. Additionally, recertifications under section 31-51rr-39 of the Regulations of Connecticut State Agencies are not permitted for leave to care for a covered servicemember. An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to section 31-51rr-10(c) of the Regulations of Connecticut State Agencies.

(e) An employer requiring an employee to submit a certification for leave to care for a

covered servicemember shall accept as sufficient certification, in lieu of the Department's optional certification forms (WH–385) or an employer's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employer may request that the employee have one of the authorized health care providers listed under section 31-51rr-41(a) of the Regulations of Connecticut State Agencies complete the United State Department of Labor optional certification form (WH–385) or an employer's own form, as requisite certification for the remainder of the employee's necessary leave period.

(2) An employer may seek authentication and clarification of the ITO or ITA under section 31-51rr-38 of the Regulations of Connecticut State Agencies. An employer may not utilize the second or third opinion process outlined in section 31-51rr-38 of the Regulations of Connecticut State Agencies or the recertification process under section 31-51rr-39 of the Regulations of Connecticut State Agencies during the period of time in which leave is supported by an ITO or ITA.

(3) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to section 31-51rr-10(c) of the Regulations of Connecticut State Agencies when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) An employer requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(1) An employer may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers under section 31-51rr-38 of the Regulations of Connecticut State Agencies. An employer may not utilize the second or third opinion process outlined in section 31-51rr-38 of the Regulations of Connecticut State Agencies or the recertification process under section 31-51rr-39 of the Regulations of

Connecticut State Agencies when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employer may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to section 31-51rr-10(c) of the Regulations of Connecticut State Agencies when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employer may also require an employee to provide documentation, such as a veteran's Form DD–214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

(g) Where medical certification is requested by an employer, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. In all instances in which certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave.

(Effective May 12, 2014)

Sec. 31-51rr-42. Intent to return to work (29 CFR § 825.311)

(a) An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and shall take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employer may require that the employee provide the employer notice within two (2) business days of the changed circumstances where foreseeable. The employer may also obtain information on such changed circumstances through requested status reports.

(Effective May 12, 2014)

Sec. 31-51rr-43. Fitness-for-duty certification (29 CFR § 825.312)

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires

all similarly-situated employees, such as those in the same occupation and with the same serious health condition, who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate, including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employer, in the fitness-for-duty certification process as in the initial certification process.

(b) An employer may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider shall certify that the employee is able to resume work. Additionally, an employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employer shall provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by section 31-51rr-31(d) of the Regulations of Connecticut State Agencies, and shall indicate in the designation notice that the certification shall address the employee's ability to perform those essential functions. If the employer satisfies these requirements, the employee's health care provider shall certify that the employee can perform the identified essential functions of his or her job. Following the procedures set forth in section 31-51rr-38(a) of the Regulations of Connecticut State Agencies, the employer may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employer may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a fitness-for-duty certification may be required.

(c) The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(d) The designation notice required in section 31-51rr-31(d) of the Regulations of Connecticut State Agencies shall advise the employee if the employer will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notice required in subsection (d) of this section. If an employer provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA.

(f) An employer is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employer is entitled to a certification of fitness to return to duty for such absences up to once every thirty (30) days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee

took such leave. If an employer chooses to require a fitness-for-duty certification under such circumstances, the employer shall inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past thirty (30) days. Alternatively, an employer can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every thirty (30) days and as long as the employer advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. The employer may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence. Reasonable safety concerns means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employer should consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

(g) If State or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied.

(h) Requirements under the ADA apply. After an employee returns from FMLA leave, the ADA requires any medical examination at an employer's expense by the employer's health care provider be job-related and consistent with business necessity. For example, an attorney may not be required to submit to a medical examination or inquiry just because his or her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employer may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his or her job or to his/her impairment. If an employee's serious health condition may also be a disability within the meaning of the ADA, the FMLA does not prevent the employer from following the procedures for requesting medical information under the ADA.

(Effective May 12, 2014)

Sec. 31-51rr-44. Failure to provide certification (29 CFR § 825.313)

(a) **Foreseeable leave.** In the case of foreseeable leave, if an employee fails to provide certification in a timely manner as required by section 31-51rr-36 of the Regulations of Connecticut State Agencies, then an employer may deny FMLA coverage until the required certification is provided. For example, if an employee has fifteen (15) days to provide a certification and does not provide the certification for forty-five (45) days without sufficient reason for the delay, the employer can deny FMLA protections for the thirty (30)-day period following the expiration of the fifteen (15)-day time period, if the employee takes leave during such period.

(b) **Unforeseeable leave.** In the case of unforeseeable leave, an employer may deny FMLA coverage for the requested leave if the employee fails to provide a certification within

fifteen (15) calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within fifteen (15) calendar days. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employer can deny FMLA protections for the leave following the expiration of the fifteen (15)-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not FMLA leave.

(c) **Recertification.** An employee shall provide recertification within the time requested by the employer, which must allow at least fifteen (15) calendar days after the request, or as soon as practicable under the particular facts and circumstances. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employer may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

(d) **Fitness-for-duty certification.** When requested by the employer pursuant to a uniformly applied policy for similarly-situated employees, the employee shall provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work if the employer has provided the required notice; the employer may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition, the employee may be terminated.

(Effective May 12, 2014)

Sec. 31-51rr-45. Recordkeeping requirements (29 CFR § 825.500)

(a) FMLA provides that covered employers shall make, keep, and preserve records pertaining to their obligations under section 31-51rr of the Connecticut General Statutes in accordance with the recordkeeping requirements of section 11(c) of the FLSA and in accordance with these regulations. These regulations establish no requirement for the submission of any records unless specifically requested by a Labor Departmental official.

(b) No particular order or form of records is required. These regulations establish no requirement that any employer revise its computerized payroll or personnel records systems to comply. However, employers must keep the records specified by these regulations for not less than three (3) years and make them available for inspection, copying, and transcription by representatives of the Labor Department upon request. The records may be maintained and preserved on microfilm or other basic source document of an automated data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period, and that extensions or transcriptions of the information required herein can be and are made available upon request. Records kept in computer form must be made available for transcription or

copying.

(c) Covered employers who have eligible employees must maintain records that must disclose the following:

(1) Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

(2) Dates FMLA leave is taken by FMLA eligible employees. Leave must be designated in records as FMLA leave; leave so designated may not include an employer plan which is not also covered by FMLA.

(3) If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave.

(4) Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all written notices given to employees as required under FMLA and these regulations. Copies may be maintained in employee personnel files.

(5) Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.

(6) Premium payments of employee benefits.

(7) Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

(d) Covered employers with no eligible employees must maintain the records set forth in subsection (c)(1) of this section.

(e) If FMLA-eligible employees are not subject to FLSA's recordkeeping regulations for purposes of minimum wage or overtime compliance, an employer need not keep a record of actual hours worked, provided that:

(1) Eligibility for FMLA leave is presumed for any employee who has been employed for at least twelve (12) months; and

(2) With respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record maintained in accordance with subsection (b) of this section.

(g) Records and documents relating to certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the federal Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA, which permit such information to be disclosed consistent with the requirements of FMLA. If the ADA, as amended, or CFEPA is also applicable, such records shall be maintained in conformance with ADA and CFEPA confidentiality requirements, except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed if the employee's physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA or other pertinent law shall be provided relevant information upon request.

(Effective May 12, 2014)

Sec. 31-51rr-46. Interaction with employer's policies (29 CFR § 825.700)

(a) An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the Act may not be diminished by any employment benefit program or plan. For example, a provision of a CBA which provides for reinstatement to a position that is not equivalent because of seniority and may provide lesser pay is superseded by FMLA. If an employer provides greater unpaid family leave rights than are afforded by FMLA, the employer is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits other than through COBRA, to the additional leave period not covered by FMLA.

(b) Nothing in this Act prevents an employer from amending existing leave and employee benefit programs, provided they comply with FMLA. However, nothing in the Act is intended to discourage employers from adopting or retaining more generous leave policies.

(Effective May 12, 2014)

Sec. 31-51rr-47. Interaction with Federal and State anti-discrimination laws (29 CFR § 825.702)

(a) Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability, such as under Title VII of the federal Civil Rights Act of 1964, as amended by the federal Pregnancy Discrimination Act of 1978, or any protected class under CFEPA.

(b) If an employee is a qualified individual with a disability within the meaning of the ADA or an applicable state law, the employer must make reasonable accommodations, barring undue hardship, in accordance with the ADA or applicable state law. At the same time, the employer must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to twelve (12) weeks of leave in any twelve (12)-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employers to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during

leave under the same circumstances.

(c) (1) A reasonable accommodation under the ADA or applicable state law might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employer did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of twelve (12) workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employer to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule for planned medical treatment to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following subsections of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an "eligible employee" entitled to FMLA leave requests ten (10) weeks of medical leave as a reasonable accommodation, which the employer grants because it is not an undue hardship. The employer advises the employee that the ten (10) weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employer maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time on a reduced leave schedule after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two(2)-week equivalent of FMLA leave entitlement, notwithstanding an employer policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employer to part-time employees.

(4) At the end of the FMLA leave entitlement, an employer is required under FMLA to

reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employer's FMLA obligations would be satisfied if the employer offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA or an applicable state law may require the employer to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d) (1) If FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA or an applicable state law may require that an employer offer an employee the opportunity to take such a position. An employer may not change the essential functions of the job in order to deny FMLA leave.

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently, subject to proper notice and designation by the employer. At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a "light duty" position. If the employer offers such a position, the employee is permitted but not required to accept the position. As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the twelve (12)-week FMLA leave entitlement is exhausted. If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA or may have rights under an applicable state law.

(e) If an employer requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA or any applicable state law requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the federal Civil Rights Act of 1964, as amended by the federal Pregnancy Discrimination Act of 1978, or an applicable state law, an employer should provide the same benefits for women who are pregnant as the employer provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than twelve (12) months by the employer and, therefore, not an "eligible" employee under FMLA, may not be denied maternity leave if the employer normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301–4333 (USERRA), veterans are entitled to receive all rights and

benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning service member would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employer during the period of military service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of twelve (12) months and nine hundred fifty (950) hours of employment.

(Effective May 12, 2014)

Sec. Appendix A.

Forms to use for the Family and Medical Leave Act (FMLA) for Paraprofessionals

(Sec. 31-51rr-1*et seq.*of the Regulations of Connecticut State Agencies)

United States Department of Labor Wage and Hour Division (WHD)

http://www.dol.gov/whd/forms/index.htm

WH-380-E: FMLA Certification of Health Care Provider for Employee's Serious Health Condition

WH-380-E Form & Instruction

WH-380-F: FMLA Certification of Health Care Provider for Family Member's Serious Health Condition

WH-380-F Form & Instruction

WH-381: FMLA Notice of Eligibility and Rights & Responsibilities

WH-381 Form & Instruction

WH-382: FMLA Designation Notice

WH-382 Form & Instruction

WH-384: FMLA Certification of Qualifying Exigency For Military Family Leave

WH-384 Form & Instruction

WH-385: FMLA Certification for Serious Injury or Illness of Covered Servicemember — for Military Family Leave

WH-385 Form & Instruction

WH-385V: FMLA Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

WH-385V Form & Instruction

(Effective May 12, 2014)

Sec. APPENDIX B.

Sections 31-51r through 31-51w of the Connecticut General Statutes

An Act Concerning Family and Medical Leave Benefits for Certain Municipal Employees

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 12 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medicaltreatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a political subdivision for at least one year and for 950 hours over the previous 12 months.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the Connecticut Department of Labor.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede

any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

(Effective May 12, 2014)

Agency

Department of Labor

Subject

Designation by the Labor Commissioner of Occupations as High-Risk or Safety-Sensitive Occupations Subject to Random Urinalysis Drug Testing

Inclusive Sections

§§ 31-51x-1—31-51x-8

CONTENTS

Designation by the Labor Commissioner of Occupations as High-Risk or Safety-Sensitive Occupations Subject to Random Urinalysis Drug Testing

Sec. 31-51x-1. Definitions

(a) "Commissioner" means the Labor Commissioner of the State of Connecticut whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designee.

(b) "Labor Department" means the State of Connecticut Labor Department.

(c) "Employee" means any individual currently employed or formerly employed by an employer and includes any individual in a managerial position.

(d) "Employer" means any individual, corporation, partnership or unincorporated association, excluding the state or any political subdivision thereof.

(e) "High-risk or Safety-sensitive occupation" means an occupation which,

(1) presents a clearly significant life threatening danger to the employee so occupied, his fellow employees, or the general public and is performed in a manner or place inherent with or inseparable from such danger, and

(2) requires the exercise of discriminating judgment or high degree of care and caution, and

((3))

(Effective October 23, 1989)

Sec. 31-51x-2. Designation by the commissioner

The Commissioner shall designate a high-risk or safety-sensitive occupation any occupation he has determined after investigation to have met the definition of that term as contained in section 31-51x-1.

(Effective October 23, 1989)

Sec. 31-51x-3. Request for designation

Any employee or his representative, including the collective bargaining agent, or any employer or his representative, may make a written request to the Commissioner that an occupation be designated as a high-risk or safety-sensitive occupation or if there is a request pending for such designation that such designation not be made. Any such request shall include argument and/or evidence in support of the request. Written requests for designation of occupations as high-risk or safety-sensitive occupations or requests that such designations not be made should be mailed to:

Director
State of Connecticut
Occupational Safety and Health
200 Folly Brook Boulevard

Wethersfield, Connecticut 06109

(Effective October 23, 1989)

Sec. 31-51x-4. Investigation by the commissioner

The Commissioner shall investigate a written request only in cases where to his knowledge a designation of high-risk or safety-sensitive will result in the institution or implementation of a program of random urinalysis drug testing for employees in such occupation. The Commissioner shall make all investigations as expeditiously as possible. The Commissioner may at his discretion investigate separate requests in a consolidated manner.

(Effective October 23, 1989)

Sec. 31-51x-5. Process of investigation

The Labor Department shall furnish to the employer a notice which states that a written request has been received by the department that an occupation be designated as a high-risk or safety-sensitive occupation for the purpose of random urinalysis drug testing. The employer shall post this notice in a conspicuous location accessible to employees at the worksite affected by the request. The notice shall advise that an investigation has been initiated, state the purpose of the investigation, and afford an opportunity for comment within a twenty (20) day period, which period may be extended by the Commissioner if he deems necessary. The Commissioner may seek any further information he deems necessary to complete such investigation.

(Effective October 23, 1989)

Sec. 31-51x-6. Determination by the commissioner

Not later than ninety (90) days after the completion of the investigation the Commissioner shall make a determination and furnish a copy of such determination to the employee or his representative, including the collective bargaining agent, and the employer or his representative, directly affected by the determination. A copy of such determination shall be posted by the employer in a conspicuous location accessible to employees at the worksite affected. No determination of an occupation as a high-risk or safety-sensitive occupation shall create any obligation to institute or implement a program of random urinalysis drug testing. No such determination shall in itself constitute a bar to the limiting or discontinuing of a program of random urinalysis drug testing.

(Effective October 23, 1989)

Sec. 31-51x-7. Review of commissioner's determination

The Commissioner may upon receipt of a written request, which shall include argument and/or evidence for review, review any previous determination that an occupation is or is not a high-risk or safety-sensitive occupation. This section shall not be interpreted to require

such a review.

(Effective October 23, 1989)

Sec. 31-51x-8. Maintenance of a list

The Commissioner shall maintain a list entitled, "List of Occupations Designated as High-risk or Safety-sensitive by the Labor Commissioner."

The list shall be a public record pursuant to Connecticut General Statutes and shall consist of all occupations the Commissioner has designated as high-risk or safety-sensitive occupations. The list may serve as a guide in investigations and determinations made pursuant to these Regulations.

(Effective October 23, 1989)

Agency

Department of Labor

Subject

Identification of Parties Subject to Debarment from the Award of Contracts by the State or any of its Political Subdivisions

Inclusive Sections

§§ 31-53a-1—31-53a-3

CONTENTS

Identification of Parties Subject to Debarment from the Award of Contracts by the State or any of its Political Subdivisions

Sec. 31-53a-1. Definitions

For purposes of sections 31-53a-1 through 31-53a-3 inclusive of these regulations the following definitions apply:

(a) "Commissioner" means the Labor Commissioner of the State of Connecticut whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109.

(b) "Disregarded their obligations" means the employment or payment by any person or firm of any mechanic, laborer or worker in the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project for or on behalf of the state or any of its agents, or any political subdivision of the state or any of its agents, at a rate of wage on an hourly basis which is less than the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed, remodeled, refinished, refurbished, rehabilitated, altered or repaired, or failure to pay the amount of payment or contributions payable on behalf of each such employee to any employee welfare fund, or in lieu thereof to the employee, or the failure to keep, maintain and preserve such records relating to the wages and hours worked by each employee and a schedule of the occupation or work classification at which each mechanic, laborer or worker on the project is employed during each work day and week in such manner and form as the labor commissioner establishes to assure the proper payments due to such employees or employee welfare funds under sections 31-53 and 31-54 of the General Statutes of Connecticut, or failure, upon the award of any contract, by the contractor to whom such contract is awarded, to certify under oath to the labor commissioner the pay scale to be used by such contractor and any of his subcontractors for work to be performed under such contract.

(c) "Interest" means entitlement to at least 10% of the net profits of a firm, corporation, partnership, association, or any other entity by a firm or person.

(d) "Person" means individual, firm, partnership, corporation, association or any other entity.

(Effective June 24, 1986)

Sec. 31-53a-2. Application of definitions

Section 31-53a-1 (c) shall be applied prospectively from the effective date of this regulation. Section 31-53a-1 (b), shall apply to acts or omissions occurring on or after the effective date of this regulation or occurring within three years prior thereto.

(Effective June 24, 1986)

Sec. 31-53a-3. Publication of debarment list

The commissioner shall, a minimum of two times per year, publish, by distributing to all departments of the state and political subdivisions thereof, a list giving the names of persons

or firms whom he has found to have disregarded their obligations under section 31-53 of the General Statutes of Connecticut or to have been barred from federal government contracts in accordance with the provisions of the Davis-Bacon Act, 49 Stat. 1011 (1931), 40 USC 276a-2. Said list shall also contain the names of any firm, corporation, partnership, association, or any other entity in which such persons or firms have been found by the commissioner to have an interest.

(Effective June 24, 1986)

Agency
Department of Labor

Subject
Construction Safety

Inclusive Sections
§§ 31-53b-1—31-53b-5

CONTENTS

Construction Safety

Sec. 31-53b-1. Definitions

As used in sections 31-53b-1 through 31-53b-5, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Certified payroll" means a certified payroll required to be submitted to the contracting agency pursuant to section 31-53(f) of the Connecticut General Statutes;

(2) "Completion document" means a card, document, certificate or other written record issued by the federal Occupational Safety and Health Administration, or by a federal Occupational Safety and Health Administration authorized trainer, or by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48, or in the case of telecommunications employees, in accordance with 29 CFR 1910.268, evidencing that a person subject to these regulations has completed a construction safety and health course, program or training, or a supplemental refresher training course;

(3) "Construction safety and health course, program or training" means a course, program or training in construction safety or health of at least ten hours duration approved by the federal Occupational Safety and Health Administration, or a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, at least ten hours of training in accordance with 29 CFR 1910.268;

(4) A "Supplemental refresher training course" means a course, program or training in construction safety or health, which course includes, but is not limited to, an update of revised Occupational Safety and Health Administration standards and a review of required construction hazards training, of at least four hours in duration taught by a federal Occupational Safety and Health Administration authorized trainer to electricians or plumbers subject to the continuing education requirements of section 20-334d of the Connecticut General Statutes, who have completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on such public works project;

(5) "Employee" means "employee" as defined in section 31-71a(2) of the Connecticut General Statutes;

(6) "Labor Commissioner" means the Commissioner of the Connecticut Department of Labor;

(7) "Mechanic," "laborer," or "worker" means any individual engaged in the duties of a mechanic, laborer or worker, pursuant to the classifications of labor under Section 31-53 of the Connecticut General Statutes, but does not mean an employee of a public service company, as defined in section 16-1 of the Connecticut General Statutes, or drivers of commercial motor vehicles driving such vehicles on public works projects and delivering or picking up cargo from such projects, provided that such drivers perform no labor relating to the projects other than the loading and the unloading of their cargo;

(8) "Plumber" means any person licensed in accordance with Chapter 393 of the

Connecticut General Statutes who is subject to the continuing education requirements of section 20-334d of the Connecticut General Statutes and who performs "plumbing and piping work" as defined in section 20-330(3) of the Connecticut General Statutes;

(9) "Electrician" means any person licensed in accordance with Chapter 393 of the Connecticut General Statutes who is subject to the continuing education requirements of section 20-334d of the Connecticut General Statutes and who performs "electrical work" as defined in section 20-330(2) of the Connecticut General Statutes; and

(10) "Public works project" means a public works project to which subsection (g) of section 31-53 of the Connecticut General Statutes applies.

(Adopted effective May 5, 2009; Amended September 12, 2013)

Sec. 31-53b-2. Construction safety course, program or training; Supplemental Refresher Training Course

(a) Any person performing the duties of a mechanic, laborer or worker on a public works project shall be required, as a condition of performing such work, to demonstrate compliance with section 31-53b of the Connecticut General Statutes by having completed a construction safety and health course, program or training, as appropriate.

(b) In addition to the requirements set forth in subsection (a) of this section, any electrician or plumber subject to section 31-53b of the Connecticut General Statutes who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on such public works project, shall be in compliance with these regulations provided such electrician or plumber has successfully completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

(c) Proof of course, program or training or supplemental refresher training course completion shall be demonstrated through the presentation of a course, program or training or supplemental refresher training course completion document. For purposes of the supplemental refresher training course, proof of training shall be a student course completion card issued by the federal Occupational Safety and Health Administration authorized trainer who conducted the training. Each student course completion card shall reference the trainer's identification number;

(d) For purposes of these regulations, any completion document with an issuance date more than five years prior to the commencement date of such public works project shall not constitute compliance with section 31-53b of the Connecticut General Statutes and this section, except electricians and plumbers may be found to be in compliance provided that they have successfully completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

(Adopted effective May 5, 2009; Amended September 12, 2013)

Sec. 31-53b-3. Contractor responsibility

Each contractor subject to section 31-53b of the Connecticut General Statutes shall furnish proof, as provided in subsection (b) of section 31-53b-2 of the Regulations of Connecticut State Agencies, with the weekly certified payroll form for the first week that each person who performs the duties of a mechanic, laborer or worker begins work on the public works project.

(Adopted effective May 5, 2009)

Sec. 31-53b-4. Certified payroll

For each person who performs the duties of a mechanic, laborer or worker on a public works project subject to section 31-53 of the Connecticut General Statutes, the employer shall affix a copy of the construction safety course, program or training completion document to the certified payroll required to be submitted to the contracting agency for such project on which such employee's name first appears.

(Adopted effective May 5, 2009)

Sec. 31-53b-5. Penalty

Notwithstanding subsection (a) of section 31-53b-2 of the Regulations of Connecticut State Agencies, any person performing the duties of a mechanic, laborer or worker on a public works project without proof of course, program or training completion as provided in said section shall be subject to removal from the worksite if such person does not provide such proof to the Labor Commissioner by the fifteenth day after the date the employee is determined to be in noncompliance with these regulations. Any such person who is determined to be in noncompliance with these regulations may continue to work on a public works project for a maximum of fourteen consecutive calendar days while bringing his status into compliance.

(Adopted effective May 5, 2009)

Agency
Department of Labor

Subject
MINIMUM WAGES

Inclusive Sections
§§ 31-60-1—31-62-e15

CONTENTS

PART I

Definitions and General Provisions

Part II

SPECIFIC ORDERS

A

MINIMUM FAIR WAGE RATES FOR PERSONS EMPLOYED IN BEAUTY SHOPS

B

Minimum Fair Wage Rates for Persons Employed in the Laundry Occupation

C

Minimum Fair Wage Rates for Persons Employed in the Cleaning and Dyeing Occupation

D

Minimum Fair Wage Rates for Persons Employed in the Mercantile Trade

E

Minimum Fair Wage Rates for Persons Employed in the Restaurant and Hotel Restaurant Occupations

MINIMUM WAGES

PART I

Definitions and General Provisions

Sec. 31-60-1. Piece rates in relation to time rates or incentive pay plans, including commissions and bonuses

(a) **Definitions.** For the purposes of this regulation, "piece rates" means an established rate per unit of work performed without regard to time required for such accomplishment. "Commissions" means any premium or incentive compensation for business transacted whether based on per centum of total valuation or specific rate per unit of accomplishment. "Incentive plan" means any method of compensation, including, without limitation thereto, commissions, piece rate, bonuses, etc., based upon the amount of results produced, where the payment is in accordance with a fixed plan by which the employee becomes entitled to the compensation upon fulfillment of the conditions established as part of the working agreement, but shall be subject to the limitation hereinafter set forth.

(b) **Record of wages.** Each employer shall maintain records of wages paid to each employee who is compensated for his services in accordance with an incentive plan in such form as to enable such compensation to be translated readily into terms of average hourly rate on a weekly basis for each work week or part thereof of employment.

(c) **Piece rates in relation to time rates.** (1) When an employee is compensated soley at piece rates he shall be paid a sufficient amount at piece rates to yield an average rate of at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes for each hour worked in any week, and the wage paid to such employee shall be not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes for each hour worked. (2) When an employee is compensated at piece rates for certain hours of work in a week and at an hourly rate for other hours, the employee's hourly rate shall be at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes and his earnings from piece rates shall average at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes for each hour worked on piece rate for that work week, and the wage paid to such employee shall be not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes for each hour worked. (3) When an employee is employed at a combination of hourly rate and piece rate for the same hours of work (i.e., an incentive pay plan superimposed upon an hourly rate or a piece rate coupled with a minimum hourly guarantee), the employee shall receive an average rate of at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes an hour for each hour worked in any week and the wage paid to such employee shall be not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes for each hour worked.

(d) **Commission.** (1) When an employee is compensated solely on a commission basis, he shall be paid weekly an average of at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked. (2) When an employee is paid in accordance with a finding for a base rate plus commission, the wage paid weekly to the employee from these combined sources shall equal at least an average of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes an hour for each hour worked in any work week. All commissions shall be settled at least once in each month in full. When earnings are derived in whole or in part on the basis of an incentive plan other than those defined herein, the employee shall receive weekly at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked in the work week, and the balance earned shall be settled at least once monthly.

(Effective August 8, 1972; Amended January 4, 2001)

Sec. 31-60-2. Gratuities as part of the minimum fair wage

For the purposes of this regulation, "gratuity" means a voluntary monetary contribution received by the employee from a guest, patron or customer for service rendered.

(a) Unless otherwise prohibited by statutory provision or by a wage order gratuities may be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with: (1) The employee shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes and (2) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a weekly basis as a separate item in the wage record, even though payment is made more frequently and (3) each employer claiming credit for gratuities as part of the minimum fair wage paid to any employee shall provide substantial evidence that the amount claimed, which shall not exceed the allowance hereinafter provided, was received by the employee. For example, a statement signed by the employee attesting that wages received, including gratuities not to exceed the amount specified herein, together with other authorized allowances, represents a payment of not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked during the pay period, will be accepted by the commissioner as "substantial evidence" for purposes of this section, provided all other requirements of this and other applicable regulations shall be complied with.

(b) Allowance for gratuities as part of the minimum fair wage shall not exceed twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for hotel industries or not more than thirty-five cents per hour for employees in any other industry in which it can be established that gratuities have, prior to July 1, 1967, customarily and usually constituted and been recognized as part of the employee's remuneration for hiring purposes for that particular employment. Gratuities received in excess of the amount specified herein as allowable need

not be reported or recorded for the purposes of this regulation. The wage paid to each employee shall be at least the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for each hour worked, which may include gratuities not to exceed the limitation herein set forth, provided all conditions herein set forth shall be met.

(Effective August 8, 1972; Amended January 4, 2001)

Sec. 31-60-3. Deductions and allowances for reasonable value of board and lodging (Repealed)

Repealed June 11, 2014.

(Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-60-4. Physically or mentally handicapped employees

(a) For the purposes of this regulation, a "physically or mentally handicapped person" means a person whose earning capacity is impaired by age or physical of mental deficiency or injury.

(b) To prevent curtailment of employment opportunities, physically or mentally handicapped workers whose earning capacity has been impaired by a physical or mental impairment which constitutes an actual handicap as directly related to the performance of the duties which the employee is required to perform may be paid at a modification of the minimum fair wage rate, provided:

(1) Permission has been granted by the labor commissioner, after an investigation, to employ the worker at a rate lower than the established minimum fair wage. Such permission shall specify the minimum wage to be paid to the employee and the type of work for which modification of the minimum fair wage was granted. Such permission shall be valid from the date of issuance and acceptance by the employer and employee to the date of revocation or the cancellation of such permission. Such permission may be revoked by the commissioner if investigation discloses that it was obtained by misrepresentation of any kind.

(2) Any deviation from the terms of the permission except an upward revision of the minimum wage set forth in the permission shall be deemed a violation of this regulation and will cancel the permission effective on the date the violation occurs and from that date forward the minimum fair wage as defined in section 31-58 of the general statutes shall be applicable for all hours of employment.

(c) An employer desiring to employ a physically or mentally handicapped worker at a modification of the minimum fair wage rate shall make application to the labor commissioner prior to such employment and shall set forth: (1) The name and address of the person to whom the modified minimum wage rate shall apply; (2) the nature of the handicap; (3) the duties to which the worker will be assigned and the apparent degree of handicap in performing such duties; (4) the proposed hourly rate at which the handicapped

worker is to be employed based upon the extent to which the worker is handicapped in the performance of duties required; (5) the willingness of the employee to accept a modified hourly rate subject to approval.

(d) In any case where the nature of the handicap and its relation to the performance of duties to be assigned is not discernible by ordinary observation, the labor commissioner may require certification of such handicap and its relation to job performance by a licensed physician at the expense of the employer.

(e) In any case where the nature of the handicap is due to mental disability, the legal guardian of the employee may act in behalf of the employee with respect to the acknowledgement of the handicap and the acceptance of the modified minimum wage rate.

Sec. 31-60-5. Repealed

Repealed March 17, 1970.

Sec. 31-60-6. Minors under the age of eighteen

(a) For purposes of this regulation, "minor" means a person at least sixteen years of age but not over eighteen years of age. To prevent curtailment of employment opportunities for minors and to provide a reasonable period during which training for adjustment to employment conditions may be accomplished, a minor may be employed at a modification of the minimum fair wage established by subsection (j) of section 31-58 of the 1971 Supplement to the General Statutes, but at not less than eighty-five percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for the first two hundred hours of employment. When a minor has had an aggregate of two hundred hours of employment, he may not be employed by the same or any other employer at less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes.

(b) In addition to the records required by section 31-66 of the 1966 supplement to the general statutes and section 31-60-13, each employer shall obtain from each minor to be employed at a modification of the minimum fair wage rate as herein provided a statement of his employment prior to his date of accession with his present employer. Such statement of prior employment, supplemented by the present employer's record of hours worked by the minor while in his employ, will be deemed satisfactory evidence of good faith on the part of the employer with respect to his adherence to the provisions of this regulation, provided such record shall be in complete compliance with the requirements of section 31-66 of the general statutes and section 31-60-12.

(c) Deviation from the provisions of this regulation will cancel the modification of the minimum fair wage herein provided for all hours during which the violation prevailed and for such time the minimum wage shall be paid.

(Effective August 8, 1972; Amended January 4, 2001)

Sec. 31-60-7. Learners

(a) For the purposes of this regulation, "learner" means a person who is enrolled in an established program which provides for vocational training for employment in an occupation which is not apprenticeable but for which a training period may extend over a considerable length of time. Learners shall be paid not less than the minimum fair wage unless written permission has been given by the labor commissioner to employ learners at less than the minimum fair wage for no more than two hundred hours in an approved training program.

To obtain such permission the employer shall make written application to the labor commissioner setting forth (1) the occupation for which the learner is to be trained; (2) the length of the training period; (3) a statement setting forth a schedule of work processes in the occupation which the learner is to be taught and the approximate time to be spent at each process; (4) related technical instruction if any; (5) a statement of the proposed graduated scale of wages to be paid the learner during the training period; (6) supervision to be received by the learner; (7) the maximum number of learners to be in training at any given time; (8) the total number of fully trained employees in the same occupation.

If upon examination of such application the labor commissioner finds that a modification of the minimum fair wage earn be approved in accordance with the provisions of section 31-60 of the general statutes, as amended, such approval stipulating the applicable minimum wage and the conditions controlling continuation of the approval will be issued in writing. One copy of this approval shall be retained by the employer and one copy shall be retained by the labor department. Each person to be employed as a trainee at less than the minimum fair wage per hour shall signify his acceptance of the training agreement in writing. This statement shall be retained by the employer as part of his payroll records.

(b) In addition to the records required by section 31-66 of the 1969 supplement to the general statutes and section 31-60-13, the employer shall maintain and retain for the period of the program the following records: (1) Each worker employed as a learner shall be designated as such on the payroll records or personnel records maintained by the employer and all learners shall be listed as a separate group on the payroll records or personnel records maintained by the employer. (2) The employer shall keep a cumulative record of the number of hours worked by each employee at a learner's rate and the total accumulation of such hours shall be carried forward and posted to the payroll record at the end of each pay period.

(Effective March 17, 1970)

Sec. 31-60-8. Apprentices

(a) For the purpose of this regulation, an "apprentice" means a person at least sixteen years of age who is employed to learn a skilled trade in a bona fide apprentice program under an indenture of apprenticeship approved by the Connecticut State Apprenticeship Council of the labor department. "Apprentice program" means an established program for training skilled workers which shall provide (1) training in a skilled trade, ordinarily recognized as apprenticeable for not less than four thousand hours; (2) on the job training according to an established schedule of work processes; (3) related technical training

according to requirements for the particular trade; (4) a wage schedule progressing periodically as training advances. "Indenture" means a written agreement entered into by employer and employee by which each is to abide by the terms of the apprenticeship program during the period of apprenticeship.

(b) An apprentice may not be employed at a beginning rate less than the minimum fair wage rate unless permission in each case has been received from the labor commissioner. To obtain such permission the employer shall file an application with the labor department and such application shall include a copy of the standards of the proposed apprentice program as herein defined and a copy of the apprentice indenture. A certification of approval may be issued authorizing the employment of a named apprentice at a modification of the minimum fair wage as defined in section 31-58 of the general statutes for the length of time specified in the apprenticeship agreement when an examination of the program and agreement and an investigation of the training facilities reveals that such program and apprenticeship agreement meets all requirements as set by the Connecticut State Apprenticeship Council of the labor department. One copy of this certification shall be retained by the employer, one copy shall be retained by the labor department and one copy shall be provided to the apprentice. Such certification may be cancelled by the labor commissioner for violation of any of the terms of the certification, but, before any certification is cancelled, both the employer and the apprentice shall be notified in writing of the facts warranting such cancellation and afforded an opportunity to demonstrate or achieve compliance.

(c) In addition to the records required by section 31-66 of the general statutes and section 31-60-13, the employer shall maintain and retain for the period of apprenticeship the following records: (1) Each worker employed as an apprentice shall be designated as such on the payroll records or personnel records maintained by the employer and all apprentices shall be listed as a separate group on the payroll records or personnel records maintained by the employer. (2) The employer shall keep a cumulative record of the number of hours worked by each employee at an apprentice's rate and the total accumulation of such hours shall be carried forward and posted to the payroll record at the end of each pay period.

Sec. 31-60-9. Apparel

For the purpose of this regulation, "apparel" means uniforms or other clothing supplied by the employer for use in the course of employment but does not include articles of clothing purchased by the employee or clothing usually required for health, comfort or convenience of the employee. An allowance (deduction) not to exceed one dollar and fifty cents per week or the actual cost, whichever is lower, may be permitted to apply as part of the minimum fair wage for the maintenance of wearing apparel or for the laundering and cleaning of such apparel when the service has been performed. When protective garments such as gloves, boots or aprons are necessary to safeguard the worker or prevent injury to an employee or are required in the interest of sanitation, such garments shall be provided and paid for and maintained by the employer without charge upon the employee.

Sec. 31-60-10. Travel time

(a) For the purpose of this regulation, "travel time" means that time during which a worker is required or permitted to travel for purposes incidental to the performance of his employment but does not include time spent in traveling from home to his usual place of employment or return to home, except as hereinafter provided in this regulation.

(b) When an employee, in the course of his employment, is required or permitted to travel for purposes which inure to the benefit of the employer, such travel time shall be considered to be working time and shall be paid for as such. Expenses directly incidental to and resulting from such travel shall be paid for by the employer when payment made by the employee would bring the employee's earnings below the minimum fair wage.

(c) When an employee is required to report to other than his usual place of employment at the beginning of his work day, if such an assignment involves travel time on the part of the employee in excess of that ordinarily required to travel from his home to his usual place of employment, such additional travel time shall be considered to be working time and shall be paid for as such.

(d) When at the end of a work day a work assignment at other than his usual place of employment involves, on the part of the employee, travel time in excess of that ordinarily required to travel from his usual place of employment to his home, such additional travel time shall be considered to be working time and shall be paid for as such.

(e) Repealed.

(Effective March 17, 1970)

Sec. 31-60-11. Hours worked

(a) For the purpose of this regulation, hours worked include all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work. Such time includes, but shall not be limited to, the time when an employee is required to wait on the premises while no work is provided by the employer. Working time in every instance shall be computed to the nearest unit of fifteen minutes.

(b) All time during which an employee is required to be on call for emergency service at a location designated by the employer shall be considered to be working time and shall be paid for as such, whether or not the employee is actually called upon to work.

(c) When an employee is subject to call for emergency service but is not required to be at a location designated by the employer but is simply required to keep the employer informed as to the location at which he may be contacted, or when an employee is not specifically required by his employer to be subject to call but is contacted by his employer or on the employers authorization directly or indirectly and assigned to duty, working time shall begin when the employee is notified of his assignment and shall end when the employee has completed his assignment.

Sec. 31-60-12. Records

(a) For the purpose of this regulation, "true and accurate records" means accurate legible records for each employee showing: (1) His name; (2) his home address; (3) the occupation in which he is employed; (4) the total daily and total weekly hours worked, showing the beginning and ending time of each work period, computed to the nearest unit of fifteen minutes; (5) his total hourly daily or weekly basic wage; (6) his overtime wage as a separate item from his basic wage; (7) additions to or deductions from his wages each pay period; (8) his total wages paid each pay period; (9) such other records as are stipulated in accordance with sections 31-60-1 through 31-60-16; (10) working certificates for minor employees (sixteen to eighteen years). True and accurate records shall be maintained and retained at the place of employment for a period of three years for each employee.

(b) The labor commissioner may authorize the maintenance of wage records and the retention of both wage and hour records as outlined either in whole or in part at a place other than the place of employment when it is demonstrated that the retention of such records at the place of employment either (1) works an undue hardship upon the employer without materially benefiting the inspection procedures of the labor department, or (2) is not practical for enforcement purposes. Where permission is granted to maintain wage records at other than the place of employment, a record of total daily and weekly hours worked by each employee shall also be available for inspection in connection with such wage records.

(c) In the case of an employee who spends seventy-five per cent or more of his working time away from his employer's place of business and the maintaining of time records showing the beginning and ending time of each work period for such employee either imposes an undue hardship upon the employer or exposes him to jeopardy because of his inability to control the accuracy of such entries, a record of total daily and total weekly requirements of this section. However, in such cases, the original time entries shall be made by the employee in his own behalf and the time entries made by the employee shall be used as the basis for payroll records.

(d) Repealed.

(e) The employer shall maintain and retain for a period of three years the following information and data on each individual employed in a bona fide executive, administrative or professional capacity: (1) His name; (2) his home address; (3) the occupation in which he is employed; (4) his total wages paid each work period; (5) the date of payment and the pay period covered by payment.

(Effective March 11, 1970)

Sec. 31-60-13. Custodial employees (Repealed)

Repealed March 17, 1970.

(See 1969 Supp. § 31-66.)

Sec. 31-60-14. Employee in bona fide executive capacity

(a) For the purposes of section 31-58 (f) of the general statutes, as amended, "employee employed in a bona fide executive capacity" means any employee (1) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and (2) who customarily and regularly directs the work of two or more other employees therein; and (3) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (4) who customarily and regularly exercise discretionary powers; and (5) who does not devote more than twenty percent, or, in the case of an employee of a retail or service establishment who does not devote as much as forty percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions (1) to (4), inclusive, of this section; provided this subdivision shall not apply in the case of an employee who owns at least twenty percent interest in the enterprise in which he is employed; and (6) who is compensated for his services on a salary basis at a rate of not less than four hundred dollars per week exclusive of board, lodging, or other facilities, except that this subdivision shall not apply in the case of an employee in training for a bona fide executive position as defined in this section if (A) the training period does not exceed six months; and (B) the employee is compensated for his services on a salary basis at a rate not less than three hundred seventy-five dollars per week exclusive of board, lodging, or other facilities during the training period; (C) a tentative outline of the training program has been approved by the labor commissioner; and (D) the employer shall pay tuition costs, and fees, if any, for such instruction and reimburse the employee for travel expenses to and from each destination other than local, where such instruction or training is provided. Any trainee program so approved may be terminated at any time by the labor commissioner upon proper notice, if he finds that the intent of the program as approved has not been carried out. An employee who is compensated on a salary basis at a rate of not less than four hundred seventy-five dollars per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

(b) "Salary basis" means a predetermined amount paid for each pay period on a weekly or less frequent basis, regardless of the number of days or hours worked, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and which amount has been the subject of an employer advisement as required by section 31-71f of the Connecticut General Statutes.

(1) Although the employee need not be paid for any workweek in which he performed no work, deductions may only be made in the following five (5) instances:

(A) During the initial and terminal weeks of employment, an employer may pay a

proportionate part of an employee's salary for the time actually worked;

(B) Deductions may be made for one or more full days if the employee is absent for personal reasons other than sickness or accident;

(C) Deductions may be made for one or more full days of sickness or disability provided the deduction is made pursuant to a bona fide plan, policy or practice of making deductions from an employee's salary after sickness or disability leave has been exhausted which has been disclosed to the employee in accordance with section 31-71f of the Connecticut General Statutes;

(D) Deductions may be made for absences of less than one full day taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(E) Deductions may be made for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a safety rule of major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the employer's premises, or to other employees.

(2) (A) No deduction of any kind shall be made for any part of a workweek absence that is attributable to:

(i) Lack of work occasioned by the operating requirements of the employer;

(ii) Jury duty, or attendance at a judicial proceeding in the capacity of a witness; or

(iii) Temporary military leave.

(B) An employer is permitted to offset payments an employee receives for any of the services described in this subdivision against the employee's regular salary during the week of such absence.

(3) No deduction shall be made for an absence of less than one full day from work unless:

(A) The absence is taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(B) The absence is taken pursuant to a bona fide paid time off benefits plan that specifically authorizes the substitution or reduction from accrued benefits for the time that an employee is absent from work, provided the employee receives payment in an amount equal to his guaranteed salary.

(4) No deduction of any kind shall be made for an absence of less than one week which results from a disciplinary suspension for violating ordinary rules of employee conduct.

(Effective June 11, 1968; Amended July 25, 2001)

Sec. 31-60-15. Employee in bona fide administrative capacity

(a) For the purposes of said section 31-58 (f), "employee employed in a bona fide administrative capacity" means any employee: (1) whose primary duty consists of either:

(A) The performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or (B) the performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and (2) who customarily and regularly exercises discretion and independent judgment; and (3) (A) who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity, as such terms are defined in section 31-60-14 and 31-60-15, or (B) who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge, or (C) who executes under only general supervision special assignments and tasks; and (4) who does not devote more than twenty per cent, or, in the case of an employee of a retail or service establishment who does not devote as much as forty per cent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions (1) to (3), inclusive, of this section; and (5)(A) who is compensated for his services on a salary or fee basis at a rate of not less than four hundred dollars per week exclusive of board, lodging or other facilities, or (B) who, in the case of academic administrative personnel, is compensated for his services as required by subparagraph (A) of this subdivision or on a salary basis which is at least equal to the entrance salary for teachers in the school system or educational establishment or institution by which he is employed; provided an employee who is compensated on a salary or fee basis at a rate of not less than four hundred seventy-five dollars per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in subdivision (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

(b) "Salary basis" means a predetermined amount paid for each pay period on a weekly or less frequent basis, regardless of the number of days or hours worked, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and which amount has been the subject of an employer advisement as required by section 31-71f of the Connecticut General Statutes.

(1) Although the employee need not be paid for any workweek in which he performed no work, deductions may only be made in the following five (5) instances:

(A) During the initial and terminal weeks of employment, an employer may pay a proportionate part of an employee's salary for the time actually worked;

(B) Deductions may be made for one or more full days if the employee is absent for personal reasons other than sickness or accident;

(C) Deductions may be made for one or more full days of sickness or disability provided the deduction is made pursuant to a bona fide plan, policy or practice of making deductions from an employee's salary after sickness or disability leave has been exhausted which has been disclosed to the employee in accordance with section 31-71f of the Connecticut General Statutes;

(D) Deductions may be made for absences of less than one full day taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(E) Deductions may be made for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a safety rule of major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the employer's premises, or to other employees.

(2) (A) No deduction of any kind shall be made for any part of a workweek absence that is attributable to:

(i) Lack of work occasioned by the operating requirements of the employer;

(ii) Jury duty, or attendance at a judicial proceeding in the capacity of a witness; or

(iii) Temporary military leave.

(B) An employer is permitted to offset payments an employee receives for any of the services described in this subdivision against the employee's regular salary during the week of such absence.

(3) No deduction shall be made for an absence of less than one full day from work unless:

(A) The absence is taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(B) The absence is taken pursuant to a bona fide paid time off benefits plan that specifically authorizes the substitution or reduction from accrued benefits for the time that an employee is absent from work, provided the employee receives payment in an amount equal to his guaranteed salary.

(4) No deduction of any kind shall be made for an absence of less than one week which results from a disciplinary suspension for violating ordinary rules of employee conduct.

(c) "Fee basis" means the payment of an agreed sum for the accomplishment of a single task regardless of the time required for its completion. A fee basis payment shall be permitted only for jobs which are unique in nature rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payment on a fee basis shall amount to a rate of not less than the rate set forth in subsection (a) of this section.

(Effective June 11, 1968; Amended July 25, 2001)

Sec. 31-60-16. Employee in bona fide professional capacity

(a) For the purposes of said section 31-58 (f), "employee employed in a bona fide professional capacity" means any employee (1) whose primary duty consists of the performance of: (A) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes or (B) work that is original and creative in character in a recognized field of artistic endeavor, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination or talent of the employee or (C) teaching, tutoring, instructing or lecturing in the activity of imparting knowledge while employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment or institution by which he is employed; and (2) whose work requires the consistent exercise of discretion and judgment in its performance; and (3) whose work is predominantly intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work, and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (4) who does not devote more than twenty per cent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in subdivisions (1) to (3), inclusive, of this section; and (5) who is compensated for his services on a salary or fee basis at a rate of not less than four hundred dollars per week exclusive of board, lodging or other facilities; provided this subdivision shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, or in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, or in the case of an employee employed and engaged as a teacher as provided in subdivision (1)(C) of this section, and provided an employee who is compensated on salary or fee basis at a rate of not less than four hundred seventy-five dollars per week exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in subdivision (1) (A) or (C) of this section which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

(b) "Salary basis" means a predetermined amount paid for each pay period on a weekly or less frequent basis, regardless of the number of days or hours worked, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and which amount has been the subject of an employer advisement as required by section 31-71f of the Connecticut General Statutes.

(1) Although the employee need not be paid for any workweek in which he performed no work, deductions may only be made in the following five (5) instances:

(A) During the initial and terminal weeks of employment, an employer may pay a proportionate part of an employee's salary for the time actually worked;

(B) Deductions may be made for one or more full days if the employee is absent for personal reasons other than sickness or accident;

(C) Deductions may be made for one or more full days of sickness or disability provided the deduction is made pursuant to a bona fide plan, policy or practice of making deductions from an employee's salary after sickness or disability leave has been exhausted which has been disclosed to the employee in accordance with section 31-71f of the Connecticut General Statutes;

(D) Deductions may be made for absences of less than one full day taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq. of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(E) Deductions may be made for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a safety rule of major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the employer's premises, or to other employees.

(2) (A) No deduction of any kind shall be made for any part of a workweek absence that is attributable to:

(i) Lack of work occasioned by the operating requirements of the employer;

(ii) Jury duty, or attendance at a judicial proceeding in the capacity of a witness; or

(iii) Temporary military leave.

(B) An employer is permitted to offset payments an employee receives for any of the services described in this subdivision against the employee's regular salary during the week of such absence.

(3) No deduction shall be made for an absence of less than one full day from work unless:

(A) The absence is taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(B) The absence is taken pursuant to a bona fide paid time off benefits plan that specifically authorizes the substitution or reduction from accrued benefits for the time that an employee is absent from work, provided the employee receives payment in an amount equal to his guaranteed salary.

(4) No deduction of any kind shall be made for an absence of less than one week which results from a disciplinary suspension for violating ordinary rules of employee conduct.

(c) "Fee basis" means the payment of an agreed sum for the accomplishment of a single task regardless of the time required for its completion. A fee basis payment shall be permitted only for jobs which are unique in nature rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payment on a fee basis shall amount to a rate of not less than the rate set forth in subsection (a) of this section.

(Effective June 11, 1968; Amended July 25, 2001)

Sec. 31-60-17. Repealed

Repealed January 4, 2001.

Part II

SPECIFIC ORDERS

A

MINIMUM FAIR WAGE RATES FOR PERSONS EMPLOYED IN BEAUTY SHOPS

Sec. 31-62-A1. Definitions. As used in sections 31-62-A1 to 31-62-A11, inclusive:

(a) * * * "Beauty shop" means any shop, store or place, or part thereof, in which is conducted the business of a hairdresser or cosmetician as defined in section 20-250 of the general statutes.

(b) "Clerk" means any person, not holding one of the licenses referred to in subdivision (i), who performs the work of an appointment clerk, desk clerk, telephone operator, bookkeeper, stenographer or typist or other clerical work.

(c) "Employee" means anyone in a beauty shop who renders services for remuneration and who is not the owner of that shop. It shall include all part owners, stockholders, booth owners or booth renters to whom any of the following conditions apply: (1) Such person has not obtained a proprietor's certificate of registration from the hairdressers' and cosmeticians' division of the department of health; (2) the shop owner or his agent receives fees from customers for the service of such person, even if these fees or a part of them are returned to such person by the shop owner or his agent; (3) the shop owner or his agent exercises control over the costume, working hours, method of work or general conduct of such person while in the shop; (4) the customers or the public are given the impression, through advertising, signs, verbal statements or other means, that such person is an employee of the shop owner; (5) the shop owner or his agent supplies cosmetics, soap, lotions, pins, linens, instruments, tools, machinery, supplies or equipment of any sort for the use of such person.

(d) "Maids, porters and cleaners" includes any person, not holding one of the licenses referred to in subdivision (i), and not included in the above definition of "clerk," who cleans, sweeps or washes the shop, or cleans and washes combs, brushes or instruments, or who assists operators or patrons in any way.

(e) "Minor" means any person under eighteen years of age.

(f) "Operator" means any person holding a registered hairdresser's and cosmetician's license issued by the state of Connecticut or an assistant hairdresser's and cosmetician's license issued by the state of Connecticut or any person holding an operator's license issued by the state of Connecticut.

(Effective March 24, 1970)

Sec. 31-62-A2. Wage order (Repealed)

Repealed June 11, 2014.

(Effective August 8, 1972; Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A3. Working time (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A4. Computation of time (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A5. Tips (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A6. Commissions, etc. (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A7. Deductions (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A8. Charges (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A9. Handicapped workers (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A10. Learner clerks (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-A11. Records (Repealed)

Repealed June 11, 2014.

(Effective August 8, 1972; Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

B

Minimum Fair Wage Rates for Persons Employed in the Laundry Occupation

Sec. 31-62-B1. Definitions (Repealed)

Repealed June 11, 2014.

(Effective March 24, 1970; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-B2. Wage order (Repealed)

Repealed June 11, 2014.

(Effective August 15, 1972; Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-B3. Repealed

Repealed March 24, 1970.

Sec. 31-62-B4. Working time (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-B5. Computation of time (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-B6. Handicapped workers (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-B7. Records (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

C

Minimum Fair Wage Rates for Persons Employed in the Cleaning and Dyeing Occupation

Sec. 31-62-C1. Definitions (Repealed)

Repealed June 11, 2014.

(Effective March 24, 1970; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C2. Wage order for women and minors (Repealed)

Repealed June 11, 2014.

(Effective August 8, 1972; Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C3. Repealed

Repealed March 24, 1970.

Sec. 31-62-C4. Working time (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C5. Computation of time (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C6. Learners and apprentices (Repealed)

Repealed June 11, 2014.

(Effective August 8, 1972; Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C7. Handicapped workers (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C8. Records of employees (Repealed)

Repealed June 11, 2014.

(Effective March 24, 1970; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-C9. Repealed

Repealed March 24, 1970.

D

Minimum Fair Wage Rates for Persons Employed in the Mercantile Trade

Sec. 31-62-D1. Definitions

As used in sections 31-62-D1 to 31-62-D11, inclusive:

(a) "Commissions" means earnings based on sales. These earnings may be achieved through the payment of a fixed sum per sale or by the payment of a percentage on any or all sales made by an individual or group of individuals.

(b) "Employee" means a person employed or permitted to work in any occupation in the mercantile trade.

(c) "Mercantile trade" means the trade of wholesale or retail selling of commodities and any operation supplemental or incidental thereto, including, but not limited to, buying, delivery, maintenance, office, stock and clerical work. Repair and service employees may be excluded if the major portion of their duties is unrelated to the mercantile trade as herein defined.

(d) "Minor" means a person less than eighteen years of age.

(e) "Working time" includes all time during which an employee is required to be on duty or at prescribed premises whether or not work is then provided by the employer or during which an employee is permitted to work though not required to do so.

(Effective March 24, 1970)

Sec. 31-62-D2. Wage order

(a) **Rate.** The following minimum wage is ordered: Not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour.

(b) **Beginners.** There shall be paid for the first two hundred hours in the trade not less than eighty-five percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour.

(c) **Overtime.** Not less than one and one-half times the employee's regular hourly rate shall be paid for all hours in excess of forty in any work week.

(d) **Minimum daily earnings guaranteed.** An employee who, by request or permission of the employer, reports for duty on any day whether or not assigned to actual work shall be compensated for a minimum of four hours' earnings at his regular rate. In instances of

regularly scheduled employment of less than four hours, as mutually agreed in writing between employer and employee, and approved by the labor department, this provision may be waived, provided the minimum daily pay in every instance shall be at least twice the applicable minimum hourly rate.

(Effective August 15, 1972; Amended January 4, 2001)

Sec. 31-62-D3. Payment of wages

Each employee shall be paid, weekly, wages not less than the minimum provided in this order, and all commissions as defined herein shall be settled at least once monthly.

Sec. 31-62-D4. Regular hourly rate

Each employer shall establish a regular hourly rate for employees covered by this order. When an employee is paid a commission in whole or in part for his earnings, the regular hourly rate for the purpose of computing overtime shall be determined by dividing the employee's total earnings by the number of hours in the usual work week as supported by time records made in accordance with the provisions of section 31-62-D8.

(Effective March 24, 1970)

Sec. 31-62-D5. Computation of time

All time shall be reckoned to the nearest unit of fifteen minutes.

Sec. 31-62-D6. Beginners

Beginners may be employed at a rate not less than eighty-five percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour for the first two hundred hours in the mercantile trade and not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour thereafter, provided the number of beginners over the age of eighteen does not exceed five per cent of the persons regularly employed in the establishment. Any employee who has completed a two-hundred-hour learning period in the mercantile trade may not be employed to work at a learner's rate.

(Effective August 15, 1972; Amended January 4, 2001)

Sec. 31-62-D7. Handicapped workers

Any employee whose earning capacity has been impaired by physical or mental disability may be paid less than the minimum wage, provided specific permission in each case shall be obtained by the employer from the labor department in accordance with the provisions of section 31-67 of the general statutes.

Sec. 31-62-D8. Records

The employer shall keep available at the place of employment for a period of three years accurate and legible records in ink for each employee as follows: (1) His name; (2) his address; (3) his working certificate as proof of age if a minor employee (sixteen to eighteen

years); (4) his occupation; (5) total wages paid him each pay period; (6) his daily and weekly hours worked showing the beginning and ending hours of each work period. Records of daily and weekly hours need not be maintained for employees who qualify for exemption of the overtime requirements of this order, provided the wages paid shall be at least the minimum required in this order. With permission of the labor commissioner or his authorized representative, wage records may be kept at designated places other than the place of employment. Records of hours worked for each employee for whom such record is required shall be available at the place of employment for inspection at all reasonable times.

Sec. 31-62-D9. Repealed

Repealed March 24, 1970.

Sec. 31-62-D10. Employment under other minimum wage orders or for which no wage order has been promulgated

The provisions of these regulations shall apply to any worker engaged in the mercantile trade as defined herein for the entire work period, unless he is engaged partly in an occupation covered by another wage order or in an occupation for which no wage order has been promulgated and the time spent in each occupation is segregated and recorded.

Sec. 31-62-D11. No charge for uniforms or other facilities

The cost of uniforms or other facilities required by the employer as a condition of employment, and the reasonable cost of their maintenance, may not be charged to the employee if such expense would result in the payment of a wage less than the minimum prescribed in this order.

E

Minimum Fair Wage Rates for Persons Employed in the Restaurant and Hotel Restaurant Occupations

Sec. 31-62-E1. Wage order

(a) **Rate.** The following minimum wage is ordered: Not less than the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour, except during the period commencing January 1, 2001, and ending December 31, 2002, the minimum wage for persons employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities shall be four dollars and seventy-four cents per hour, except during said period the minimum wage for bartenders who customarily and regularly receive gratuities shall be six dollars and fifteen cents per hour.

(b) **Minimum daily earnings guaranteed.** Any employee regularly reporting for work, unless given adequate notice the day before to the contrary, or any employee called for work in any day shall be assured a minimum of two hours' earnings at not less than the minimum

rate if the employee is able and willing to work for the length of time. If the employee is either unwilling or unable to work the number of hours necessary to insure the two-hour guarantee, a statement signed by the employee in support of this situation must be on file as part of the employer's records.

(c) **Work on seventh consecutive day.** Not less than one and one-half times the minimum rate for all time worked on the seventh consecutive day.

(d) **Overtime.** Not less than one and one-half times the regular rate for all hours worked in excess of forty in any work week.

(Effective August 15, 1972; Amended January 4, 2001)

Sec. 31-62-E2. Definitions

As used in sections 31-62-E1 to 31-62-E15, inclusive:

(a) "Restaurant occupation" includes all persons engaged in the preparation and serving of food for human consumption, or in any operation incidental or supplemental thereto irrespective of whether the food is served at or away from the point of preparation, and irrespective of whether the preparation and serving of food is the sole business of the employing establishment or enterprise, with the exception that this definition shall not include the preparation and serving of food in a nonprofit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient.

This occupation includes but is not limited to employees of restaurants, cafeterias, that portion of hotel business involving the preparation and serving of food, commissaries, dairy bars, grills, coffee shops, luncheonettes, sandwich shops, tearooms, nightclubs, cabarets, automats, caterers, frankfurter stands, operators of food vending machines, and that portion of the business involving the serving of food in department and variety stores, drugstores, candy stores, bakeries, pizzerias, delicatessens, places of amusement and recreation, commercial and industrial establishments and social, recreational, fraternal and professional clubs which either regularly or intermittently serve food, as well as other establishments or businesses meeting the condition stated in this paragraph.

(b) "Restaurant employee" means any person who is employed or permitted to work in any restaurant occupation, establishment or enterprise.

(e) "Service employee" means any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.

(d) "Non-service employee" means an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above.

(e) "Gratuities" means a voluntary monetary contribution received by the employee directly from a guest, patron or customer for service rendered.

Sec. 31-62-E3. Gratuities as part of the minimum fair wage

Gratuities shall be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with:

(a) The employer shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes, and

(b) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a weekly basis as a separate item in the wage record even though payment is made more frequently, and

(c) each employer claiming credit for gratuities as part of the minimum fair wage paid to any employee shall obtain weekly a statement signed by the employee attesting that he has received in gratuities the amount claimed as credit for part of the minimum fair wage. Such statement shall contain the week ending date of the payroll week for which credit is claimed. Gratuities received in excess of twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour, need not be reported or recorded for the purpose of this regulation.

(Effective August 21, 1974; Amended January 4, 2001)

Sec. 31-62-E4. Diversified employment within the restaurant industry

If an employee performs both service and non-service duties, and the time spent on each is definitely segregated and so recorded, the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked in the service category. If an employee performs both service and non-service duties and the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded. no allowances for gratuities may be applied as part of the minimum fair wage.

Sec. 31-62-E5. Employment under other wage orders

(a) **Mercantile.** If an employee is engaged partly in the restaurant occupation but is also engaged partly in an occupation covered by the mercantile wage order, the provisions of the mercantile wage order shall apply to the entire work period, except that, when time spent in each occupation is segregated and separately recorded, the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked by an employee in the restaurant service category.

(b) **Other.** If an employee is engaged partly in an occupation under the restaurant wage

order but is also engaged partly in an occupation covered by another wage order other than the mercantile wage order, the higher provisions of each wage order shall apply to the entire work period unless the time spent in each occupation is definitely segregated and so recorded. Where the time spent in each occupation is definitely segregated and so recorded the provisions of the applicable wage order shall apply.

Sec. 31-62-E6. Deductions and allowances for the reasonable value of board and lodging (Repealed)

Repealed June 11, 2014.

(Amended January 4, 2001; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-E7. Deductions (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-62-E8. Deposit

No deposit shall be required by an employer from any employee for a uniform or for any other purpose except by permission of the labor department.

Sec. 31-62-E9. Hours worked

Hours worked shall include all time during which an employee is required to be on the employer's premises or to be on duty, or to be at a prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so. Meal periods may be credited as non-working time, provided the beginning and ending of the meal period shall be so recorded on the time records, and provided the employee shall be entirely free from all work requirements during the period and shall be free to leave the establishment.

Sec. 31-62-E10. Travel time and travel expenses

Any employee who is required or permitted to travel from one establishment to another after the beginning or before the close of the work day, shall be compensated for travel time at the same rate as for working time, and shall be reimbursed for the cost of transportation.

Sec. 31-62-E11. Computation of time

All time shall be reckoned to the nearest unit of fifteen minutes.

Sec. 31-62-E12. Employment of the physically or mentally handicapped

(a) For the purpose of this regulation, issued in accordance with section 31-67 of the general statutes, a "physically or mentally handicapped person" means a person whose earning capacity is impaired by age or physical or mental deficiency or injury.

(b) To prevent curtailment of employment opportunities, physically or mentally

handicapped workers whose earning capacity has been impaired by a physical or mental impairment which constitutes an actual handicap as directly related to the performance of the duties which the employee is required to perform may be paid at a modification of the minimum fair wage rate, provided permission has been granted by the labor commissioner, after an investigation, to employ the worker at a rate lower than the established minimum fair wage. Such permission shall specify the minimum wage to be paid to the employee and the type of work for which modification of the minimum fair wage was granted. Such permission shall be valid from the date of issuance and acceptance by employer and employee to the date of revocation or the cancellation of such permission. Such permission may be revoked by the commissioner if investigation discloses that it was obtained by misrepresentation of any kind. Any deviation from the terms of the permission except an upward revision of the minimum wage set forth in the permission shall be deemed a violation of this regulation and will cancel the permission effective on the date the violation occurs and from that date forward the minimum wage as defined in this wage order shall be applicable for all hours of employment.

(c) An employer desiring to employ a physically or mentally handicapped worker at a modification of the minimum fair wage rate shall make application to the labor commissioner prior to such employment and shall set forth: (1) The name and address of the person to whom the modified minimum wage rate shall apply; (2) nature of the handicap; (3) the duties to which the worker will be assigned and the apparent degree of handicap in performing such duties; (4) the proposed hourly rate at which the handicapped worker is to be employed based upon the extent to which the worker is handicapped in the performance of duties required, and (5) the willingness of the employee to accept a modified hourly rate subject to approval.

(d) In any case where the nature of the handicap and its relation to the performance of duties to be assigned is not discernible by ordinary observation, it shall be within the authority of the labor commissioner to require certification of such handicap and its relation to job performance by a licensed physician at the expense of the employer. In any case where the nature of the handicap is due to mental disability, the legal guardian of the employee may act in behalf of the employee with respect to the acknowledgement of the handicap and the acceptance of the modified minimum wage rate.

Sec. 31-62-E13. Executive employees (Repealed)

Repealed March 24, 1970.

Sec. 31-62-E14. Records

(a) For the purpose of this regulation, issued in accordance with the provisions of section 31-66 of the general statutes, "true and accurate records" means accurate legible records for each employee showing: (1) Name; (2) home address; (3) occupation in which employed; (4) total daily and total weekly hours worked, showing the beginning and ending time of each work period, computed to the nearest unit of fifteen minutes; (5) total hourly, daily or weekly basic wage; (6) additions to or deductions from wages each pay period; (7)

total wages paid each pay period, (8) overtime wage as a separate item from basic wage; (9) payment for the seventh consecutive day of work as a separate item; (10) separate itemization on payroll records of each allowance (meals, lodging, gratuities) used as part of the minimum fair wage; (11) statements signed by employee in accordance with section 31-62-E3 when credit for gratuities is claimed as part of minimum fair wage; (12) such other records as are stipulated in accordance with administrative regulation sections 31-60-1 through 31-60-16; (13) working certificates for minor employees (sixteen to eighteen years).

(b) True and accurate records shall be maintained and retained at the place of employment for a period of three years for each employee. The labor commissioner may authorize the maintenance of wage records and the retention of both wage and hour records as outlined either in whole or in part at a place other than the place of employment when it is demonstrated that the retention of such records at the place of employment either (1) works an undue hardship upon the employer without materially benefiting the inspection procedures of the labor department, or (2) is not practical for enforcement purposes. Where permission is granted to maintain wage records at other than the place of employment a record of total daily and weekly hours worked by each employee shall also be available for inspection in connection with such wage records.

(c) In the case of an employee who spends seventy-five per cent or more of his working time away from his employer's place of business and the maintaining of time records showing the beginning and ending time of each work period for such personnel either imposes an undue hardship upon the employer or exposes him to jeopardy because of his inability to control the accuracy of such entries, a record of total daily and total weekly hours will be approved as fulfilling the record-keeping requirements of this section. However, in such cases the original time entries shall be made by the employee in his own behalf and the time entries made by the employee shall be used as the basis for payroll records.

Sec. 31-62-E15. Penalty

Any employer who pays or agrees to pay any employee less than the rates applicable under this wage order shall be subject to the penalty provided in section 31-69 of the Connecticut General Statutes. Any employer who fails to keep the records required under this chapter or to furnish such records to the commissioner or any authorized representative of the commissioner upon request shall be subject to the penalty provided in section 31-69 of the Connecticut General Statutes.

(See G.S, § 31-69.)

(Effective March 24, 1970; Amended January 4, 2001)

Agency
Department of Labor

Subject
Civil Penalties for Wage Violations

Inclusive Sections
§§ 31-71h-1—31-71h-6

CONTENTS

Civil Penalties for Wage Violations

Sec. 31-71h-1. Definitions

For the purposes of Sections 31-71h-1 through 31-71h-6, inclusive, of these Regulations, the following definitions apply:

(1) "Civil penalty" means a penalty of $300.00 for each violation of part III of Chapter 557 or Chapter 558.

(2) "Commissioner" means the Labor Commissioner, whose mailing address is Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designee.

(3) "Division" means the Wage and Workplace Standards Division which is responsible for enforcement of part III of Chapter 557 and Chapter 558 of the Connecticut General Statutes whose mailing address is Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connectiut 06109.

(4) "Employer" means any employer, officer, agent or any other person who may have violated part III of Chapter 557 or Chapter 558 of the Connecticut General Statutes.

(5) "Violation" means a failure by an employer, officer, agent or other person to comply with any applicable provision of part III of Chapter 557 or Chapter 558.

(Effective July 5, 1994; Amended January 4, 2001)

Sec. 31-71h-2. Assessment of civil penalty

(a) In addition to and apart from any other penalties and/or remedies provided in part III of Chapter 557 and Chapter 558 of the Connecticut General Statutes, the Labor Commissioner shall assess a civil penalty of $300.00 upon the following determination:

(1) an employer has violated a statutory provision of part III of Chapter 557; or

(2) an employer has violated a statutory provision of Chapter 558.

(b) In determining the number of violations committed by an employer, the Commissioner shall assess a separate civil penalty for each individual employee adversely affected by the employer's violation.

(c) In addition, the Commissioner may assess more than one civil penalty against an employer with respect to the same adversely affected employee if the employer has violated more than one statutory provision under part III of Chapter 557 or Chapter 558.

(Effective July 5, 1994; Amended January 4, 2001)

Sec. 31-71h-3. Notice of violation

(a) The employer shall be notified of a civil penalty assessment by the "Notice of Violation and Opportunity to Show Cause" which shall be sent to the employer along with the "Notice To Employer-Unpaid Wages Due" statement, if applicable.

(b) In cases where there is a violation but no wages are due to any employees, the employer shall be notified of the civil penalty assessment by the "Notice of Violation and Opportunity to Show Cause" which shall be sent to the employer.

(c) The "Notice of Violation and Opportunity to Show Cause" shall provide the

following:

(1) the total civil penalty assessed;

(2) the right of the employer to request in writing a hearing to show cause why the civil penalty should not be assessed;

(3) an advisement that no hearing shall be granted unless a written request for hearing is received by the Division within twenty-one (21) days from the date of mailing of the notice; and

(4) the right of the employer to waive the right to request a hearing and to respond in writing to the notice within twenty-one (21) days of the date of mailing of the notice.

(Effective July 5, 1994)

Sec. 31-71h-4. Request for hearing

Any employer who seeks to contest a civil penalty assessment shall file, within twenty-one (21) days from the date the "Notice of Violation and Opportunity to Show Cause" was issued, a written request for an opportunity to be heard which shall clearly state the reason(s) for such request, including facts to demonstrate that no violation has occurred.

(Effective July 5, 1994)

Sec. 31-71h-5. Show cause hearing

(a) If the Commissioner determines that the employer has stated adequate facts or legal grounds to warrant a hearing, the Commissioner shall provide written notice of the hearing to show cause why a civil penalty should not be assessed and shall mail written notice to the employer of the date, time and place of the hearing. Such determination shall be within the sole discretion of the Commissioner. The notice shall inform the employer of its rights in the show cause hearing including:

(1) the right to be represented by any person, including an attorney; and

(2) the right to present documentary evidence and written and/or oral argument in support of the employer's position.

(b) A request for postponement of a hearing so scheduled shall only be granted where the rights of an employer would be subtantially prejudiced by the denial of the request or in a medical emergency. The Commissioner has sole discretion to grant such requests.

(Effective July 5, 1994)

Sec. 31-71h-6. Determination of penalty

(a) Following a hearing or after the employer has waived the right to request a hearing, the Commissioner may uphold or modify the civil penalty assessment, such determination shall be within the sole discretion of the Commissioner.

(b) If the employer requests a hearing, but the Commissioner denies the request for a hearing, the total civil penalty assessed in the Notice shall be the final civil penalty.

(c) If the employer does not request a hearing or respond in writing to the Notice, the total civil penalty assessed in the Notice shall be the final civil penalty unless otherwise

modified by the Commissioner.

(Effective July 5, 1994)

Agency

State Board of Mediation and Arbitration

Subject

Rules of Procedure

Inclusive Sections

§§ 31-91-1—31-91-70

CONTENTS

Rules of Procedure

Sec. 31-91-1—31-91-MBA5. Repealed

Repealed January 30, 1981.

Organization and Policies of the State Board of Mediation and Arbitration
Description of the Organization

Sec. 31-91-1a. Creation and authority

(a) The Connecticut State Board of Mediation and Arbitration (hereinafter referred to as the "board") was created by Sec. 31-91 of the Connecticut General Statutes, and administers various statutes that provide for mediation and arbitration services to private and public sector employers and employee organizations and appeals pursuant to Sec. 53-303e of the Connecticut General Statutes. The board is composed of six members appointed by the Governor, for six year terms as provided in Sec. 4-9a of the Connecticut General Statutes, with the public, labor, and management each represented by two members. One of the public members is designated by the Governor as the chairman and the other public member shall be the deputy chairman. The members shall have the power to complete any matter pending at the expiration of the terms for which they were appointed.

(b) Alternate members of the board are appointed by the Governor upon request of the Labor Comissioner or the chairman of the board for a term of up to one year or until a replacement is appointed. The number of alternate members appointed shall depend upon necessity and demand. Alternate members shall serve when duties are delegated. While performing such delegated duty, alternate members shall have all the powers of members of the board. Alternate members shall have the power to complete any matter pending after the expiration of the terms for which they were appointed.

(c) Board members and alternates shall take the applicable oath of office described in Sec. 31-92a of the Connecticut General Statutes before assuming their duties for the term of appointment. The director shall record the date that each board member or alternate took the oath as well as the name and title of the person administering the oath.

(d) Wherever any provisions of the Connecticut General Statutes refer to the Secretary of the Board of Mediation and Arbitration, they are construed to refer to the board director. The duties of the board director shall include but are not limited to serving as:

(1) secretary to the board;
(2) agent for service of civil process directed to the board;
(3) agent for the board when so authorized;
(4) custodian of the board's records;
(5) provider of certified copies of documents; and
(6) mediator in high priority cases.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-2. Functions

(a) The six member board establishes policy and promulgates regulations for the operation of the board. It provides advice and consent to the Labor Commissioner on the appointment of full time mediators who shall be responsible to the board.

(b) The board provides employers and employee organizations with mediators for the purpose of settlement of grievances or mediation of impasses in contract negotiations. It also makes available arbitration services for the purpose of arbitration of disputes over the interpretation or application of the terms of the written collective agreements.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-3. Meetings of the board

(a) The board shall hold regular meetings on the third Monday of every other month, except when an emergency arises. A quorum shall consist of four members, provided there is at least one public, labor, and management member present. A member who is unable to attend a meeting may, by completing a proxy form, designate an appropriate alternate member to serve as a substitute. The minutes of the meeting shall be recorded in a formal book of minutes, and these official minutes shall be signed by the director of the board.

(b) The chairman may convene special and emergency meetings.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-4. Official address

(a) All communications should be addressed to the State Board of Mediation and Arbitration, 38 Wolcott Hill Road, Wethersfield, Connecticut, 06109.

(b) Except as otherwise provided in this subsection, faxes shall be accepted by the board for communication purposes with the board. To meet any mandated time frame, faxes shall be received by the close of the business day of the board. The close of the business day is 4:30 p.m. Faxes shall not be accepted for last best offers in interest arbitration or for briefs in any proceedings.

(c) Any civil process directed to the board shall be served on the board director at the board's office during regular business hours. Regular business hours are 8:30 a.m. to 4:30 p.m.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-5. Public information

The public may inspect only the regulations, decisions and public records of the board at its offices in Wethersfield. Written requests should be submitted to the board at its above-stated official address.

(Effective January 30, 1981)

Rules of Procedure for Grievance Arbitration

Sec. 31-91-22. Purpose and scope of arbitration services

Arbitration is the procedure of submitting disputes between an employer and the employee organization designated to represent his employees to a third party neutral or tripartite panel for decision. The arbitration services of the board are available to employers and employee organizations.

(Effective January 30, 1981)

Sec. 31-91-23. Conditions for initiation of arbitration procedure

(a) A grievance or dispute will be heard by the board when any of the following conditions is met:

(1) The board is specifically named as arbitrator within a collective bargaining agreement or;

(2) The parties to the dispute submit in writing their mutual request for arbitration and mutual agreement to be bound by the board's decision; or

(3) An employee files a written claim alleging that he was discharged in violation of Sec. 53-303e of the Connecticut General Statutes.

(b) A party claiming the dispute is not arbitrable shall submit notice of such claim and the reasons therefor, to the board and to the opposing party at least ten days prior to the initial hearing date.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-24. Demand for arbitration services, payment of filing fee and types of cases

(a) A submission or demand for arbitration services shall be submitted on a completed and signed grievance arbitration request form which shall include a general statement of the dispute and the position of the filing party. The purpose of the general statement is to provide the board with the general outline of the dispute. A demand for arbitration shall be accompanied by the twenty five (25) dollar filing fee. A confirmation letter and a copy of the request for grievance arbitration form will be forwarded to the parties involved in the case.

(b) A bill for the filing fee will be sent to the non-demanding party and is due within thirty (30) days of the date of the confirmation letter. The failure of the non-demanding party to pay the twenty five (25) dollar filing fee will not delay the arbitration process. Where payment of the filing fee is not timely made, the board may seek such payment through all available legal means.

(c) Except as set forth in subsection (d) and subsection (e) of this section and subsection (h) of Section 31-91-36 of the Regulations of Connecticut State Agencies, the board shall schedule cases in chronological order.

(d) Priority cases are cases involving terminations, suspensions of thirty (30) days or

more, or layoffs. In these cases the board requests the parties to set a mutually acceptable date as soon as possible and notify the board of such date so a hearing date can be scheduled. Where the parties do not agree on a date, the board shall assign a date.

(e) Expedited cases are cases where the parties mutually request the expedited process before a panel or single arbitrator.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-25. Notice of hearing

The board shall provide notice of the date, time, and location of the formal hearing no later than twenty-one (21) days prior to such hearing.

Two cases a day may be scheduled for any employer and employee organization having more than one case awaiting a hearing before the board. Where two cases are scheduled they shall be cases between the employer and the same bargaining unit. When letters are sent to the parties scheduling hearings, two cases may be listed rather than one. Cases shall be heard in the order listed.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-26. Location of hearings

(a) Arbitration hearings shall be scheduled in the labor department, 38 Wolcott Hill Road, Wethersfield, or at such other locations as may be designated by the board.

(b) The cost of hearing rooms for arbitrations held at locations other than the labor department at Wethersfield, shall be shared equally by the parties.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-27. Postponements

(a) Where the board has scheduled a case a party may within 15 days of receipt of the hearing notice request one postponement per case by: (1) obtaining from the opposing party an agreement for the postponement, (2) confirming a new mutually acceptable hearing date, (which must be at least three months but not longer than six months from the date of the postponement request), and (3) notifying the case manager, who originally scheduled the case, of the agreement to postpone and the new mutually acceptable hearing date. Unless the parties have agreed on a postponement and a new hearing date, and have so notified the case manager within 15 days, the request for postponement shall proceed under the board's formal postponement policy set forth in subsection (c) of this section.

(b) In priority and expedited cases where a hearing date has been scheduled a party may within 15 days of receipt of the hearing notice, request one postponement per case by: (1) obtaining from the opposing party an agreement for the postponement, (2) confirming a new mutually acceptable hearing date, and (3) notifying the case manager who originally scheduled the case of the agreement to postpone and the new mutually acceptable hearing date. Where the parties have not agreed on a postponement or a new hearing date within 15 days and have not so notified the case manager, the request for postponement shall proceed

under the board's formal postponement policy set forth in subsection (c) of this section.

(c) Any formal postponement shall be granted by the board only where the requesting party or parties have demonstrated to the board that there is sufficient cause for such postponement.

(d) For the purposes of this section sufficient cause includes, but is not limited to:

(1) death or illness;

(2) spokesman handling the case is required to appear in court and cannot be available at a later time that day; (evidence of court appearance is required);

(3) a previously scheduled vacation; or,

(4) a previously scheduled interest arbitration hearing.

In all postponement requests the board may require written documentation, which shall become part of the record.

(e) The board shall contact the non-requesting party to give them an opportunity to comment prior to granting a postponement where the request for postponement is for a reason other than those enumerated in subsection (d) of this section.

(f) The board shall notify the parties to the case that a postponement has been granted.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-28. Appointment of the panel

(a) The board shall be represented at arbitration proceedings by a tripartite panel of three of its members, unless the parties have jointly agreed that a single public member of the board shall represent the board.

(b) Whenever a tripartite panel is used, the employer and employee organization may each select their advocate member from the appropriate permanent advocate members of the board, who will represent their interests on the panel. If either party fails to designate its advocate arbitrator or the advocate arbitrator is unavailable, the board shall select an advocate arbitrator for that party in the following manner:

(1) One of the permanent advocate board members shall be designated, if one is available; or

(2) If neither permanent advocate board member is available, an alternate advocate board member shall be designated by the board.

(c) The public member of the panel shall serve as chairman and shall be selected by the board pursuant to the following procedure:

(1) The chairman of the board shall be designated if he is available.

(2) If the chairman is not available, the deputy chairman shall be designated.

(3) If both the chairman and the deputy chairman are not available, an alternate public member shall be designated by the board.

(d) Where a single arbitrator has been selected to hear a case, he shall have all the powers of a panel.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-29. Waiver of oral hearings

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the panel chairman shall specify a fair and equitable procedure. If the panel assigned to hear the case feels that a hearing is necessary to make a full and fair decision, it may order a hearing.

(Effective January 30, 1981)

Sec. 31-91-30. Stenographic records

The board does not provide stenographic service during arbitration hearings. If either or both parties feel it is necessary to have their respective arbitration hearings recorded, they should make the necessary arrangements with a private reporting service at their own expense. Whenever a transcript is ordered by a party, three copies shall be sent to the board. In single member proceedings, one copy shall be required.

(Effective January 30, 1981)

Sec. 31-91-31. Adjournments

The chairman may adjourn a hearing either upon his own initiative or in response to a request by either party if good cause is shown.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-32. Arbitration in the absence of a party

An arbitration hearing may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain a postponement or adjournment. An award shall not be made solely on the default of a party. The panel members shall require the appearing party to submit such evidence as may be required for the making of an award.

(Effective January 30, 1981)

Sec. 31-91-33. Principal spokesperson

Each party shall be represented at the hearing by a principal spokesperson who shall present his party's case. The principal spokesperson may be an attorney or other authorized representative.

(Effective January 30, 1981)

Sec. 31-91-34. Attendance at hearings; subpoenas

(a) Persons having a direct interest in the arbitration proceedings are entitled to attend the hearings. It shall be discretionary with the chairman and subject to the agreement of all parties whether any other persons may attend.

(b) The subpoena power of the board may be used at the discretion of the panel only when it becomes evident that the panel will be unable to render a fair and just decision without the appearance of a material witness or pertinent records or documents.

(Effective January 30, 1981)

Sec. 31-91-35. Opening the hearing

(a) Hearings shall open with the recording of the time, date and place of the hearing, the identity of the panel members present, the identity of parties and their representatives present.

(b) The parties shall present to the panel prior to proceeding with the merits of the case, a carefully worded statement of the issue or issues in dispute between them on which the board is requested to rule. Where the parties are unable to agree upon the issue or issues to be decided, the panel shall frame the issue or issues prior to proceeding on the merits of the case.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-36. Order of proceedings

(a) The party who has filed the grievance will normally proceed first with the presentation of evidence, except that the employer shall proceed first in disciplinary cases, and the panel shall have discretion to vary the normal procedure but shall afford full and equal opportunity to all parties for presentation of relevant evidence.

(b) Each party will be permitted to make an opening statement through its principal spokesperson.

(c) Each party will have a full opportunity to present relevant evidence and to cross-examine witnesses, subject to the rulings of the panel or single arbitrator.

(d) Each party's representative will have an opportunity to make a closing statement to the panel.

(e) Once a hearing has commenced, the panel may continue the hearing to a specific date: (1) on its own initiative or, (2) on the request of a party where the panel finds that good cause is shown.

(f) The board expects all parties to be prepared to conclude the hearings without delay.

(g) The filing party may withdraw a grievance from arbitration at any time prior to the issuance of the panel's decision, upon filing a written withdrawal with the board. When a withdrawal is filed, the grievance shall be dismissed with prejudice unless a written statement is received from the filing party stating the withdrawal is without prejudice. A notice to withdraw a grievance before the hearing date shall be received by the board before the close of business, five (5) business days prior to the date of the hearing. Where said notice has not been received within this time limit, the parties are required to appear before the panel assigned to hear the issue(s). The parties may choose to have only one representative appear before the panel to withdraw a grievance.

(h) Where a grievance which has been scheduled by the board for a hearing is withdrawn or settled prior to the hearing date, the parties may mutually choose to substitute another grievance which has not already been scheduled for a hearing. The parties may mutually choose any pending grievance, regardless of its chronological order. It shall be the responsibility of the parties to select the case which they choose to have heard in lieu of the case originally scheduled, and to notify the board accordingly. Only where the board has

approved such substitutions prior to the hearing date may the hearing proceed.

(i) Where the parties withdraw a grievance scheduled for a hearing and do not choose the option of substituting another grievance of their choice in lieu of the withdrawn grievance, the board may substitute the next grievance listed in chronological order in lieu of the case being withdrawn. Such substitutions may only be made by the board where the withdrawal is submitted at least three (3) weeks prior to the hearing date.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-37. Evidence

(a) The parties may offer such evidence as they desire and shall produce such additional evidence as the panel members may deem necessary to an understanding and determination of the dispute. The panel members shall be the judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all panel members and both parties, except where any of the parties is absent, in default or has waived his right to be present.

(b) Documents, records and other pertinent data, when offered by either party, may be received in evidence by the panel. Written evidence must be submitted either in the original or proper copies thereof. The names and addresses of all witnesses and exhibits in order received shall be made a part of the case file and recorded on the official hearing forms supplied by the board. The panel shall not be required to return exhibits.

(c) In tripartite proceedings the parties shall be required to submit five copies of each exhibit to the chairman at the hearing: one copy for each of the three panel members; one copy for the other party; and one copy for the case file. In proceedings before a single arbitrator, three copies of each exhibit must be submitted.

(Effective January 30, 1981)

Sec. 31-91-38. Witnesses

(a) All witnesses shall be sworn. The chairman of the panel shall administer the following oath to all witnesses: "You solemnly swear that the evidence you shall give, concerning the case now in question, shall be the truth, the whole truth and nothing but the truth, so help you God." When any person, required to take an oath, from scruples of conscience declines to take it in the usual form or when the chairman is satisfied that any person called as a witness does not believe in the existence of a supreme being, a solemn affirmation may be administered to him in the form of the oath prescribed, except that instead of the word "swear" the words "solemnly and sincerely affirm and declare" shall be used and instead of the words "so help you God" the words"upon the pains and penalties of perjury or false statement" shall be used. The parties shall be advised that all sworn testimony is subject to the Connecticut Statutes on perjury.

(b) All witnesses called shall be subject to cross examination by the other party's chief spokesperson.

(c) The panel members may question witnesses at any point in the hearing.

(d) The chairman of the panel shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses, and a request by either party that a witness or witnesses be so retired may be granted if any possibility exists that denial of such a request could affect the testimony of the witnesses provided the following persons shall not be so retired:

(1) Persons who are a direct party in interest; except that if such person is to be a witness, such person shall be first to present testimony;

(2) The principal spokesperson for a party; or

(3) Persons whose duty it is to assist the principal spokesperson in preparing the case.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-39. Evidence by affidavit and filing of documents

(a) The panel members may receive and consider the evidence of witnesses by affidavit, but shall only give it such weight as deemed proper after consideration of any objection made to its admission.

(b) All documents not filed with the panel at the hearing, but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the board for transmission to the panel. All parties shall be afforded opportunity to examine such documents.

(Effective January 30, 1981)

Sec. 31-91-40. Inspection

Whenever the panel judges it necessary, an on site inspection may be made of the premises in connection with the subject matter of the dispute, after written notice to the parties, who may be present at such inspection.

(Effective January 30, 1981)

Sec. 31-91-41. Briefs

(a) After the presentation of evidence, each party shall be permitted to file a brief.

(b) The panel may require the parties to submit briefs on the issue or issues of the dispute and may require a brief on a particular point or question.

(c) The briefing schedules agreed upon by the parties and the arbitrator or arbitrators shall be strictly adhered to and the parties shall submit their briefs directly to the panel and to the opposing party with a copy to the board in accordance with such schedule. Parties wishing to reserve their right to a reply brief shall do so at the hearing. Any request for extension of the briefing schedule shall be made only to the board. The board shall forward all such requests to the panel. The panel may grant a request for extension only where sufficient cause is shown by the requesting party or parties. For purposes of this subsection sufficient cause means an occurrence which could not have been known or anticipated by a reasonable person at the time the briefing schedule was agreed to and which the requesting party or parties argues created the need for delay. An extension may be considered by the

panel only where the request has been received by the board at least one week prior to the due date, unless sufficient cause has been shown for making the request later. Late briefs shall be returned to the filing party.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-42. Closing of hearings

(a) The panel members shall inquire of both parties whether they have any further evidence to offer or witnesses to be heard. Upon receiving negative replies, the chairman of the panel shall declare the hearings closed.

(b) If briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the panel members for the filing of said summary briefs or documents with the board.

(Effective January 30, 1981)

Sec. 31-91-43. Reopening of hearings

Prior to the rendering of an award, a party may move to reopen a hearing for good cause shown such as the emergence of new evidence, but a hearing shall be reopened contingent solely upon the discretion of the panel chairman.

(Effective January 30, 1981)

Sec. 31-91-44. Award

The award for termination cases shall be rendered by the panel members not more than forty-five (45) days from the date of the final executive panel session held to decide the case, or, where heard by a single arbitrator not more than forty-five (45) days from the date of the last hearing or the briefing date, whichever is later. The award for all cases other than terminations shall be rendered by the panel members within seventy-five (75) days from the date of the final executive panel session held to decide the case or, where heard by a single arbitrator, not more than seventy-five (75) days from the date of the last hearing or the briefing date, whichever is later.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-45. Executive panel sessions; form of award

(a) The executive panel session is the session held to decide the case after the last hearing or the briefing date, whichever is later. The panel shall schedule an agreed upon date for an executive panel session which shall be held not more than thirty days after the last hearing or the briefing date, whichever is later.

(b) Oral awards may be rendered upon mutual request of the parties. Whether or not an oral award has been rendered, an award shall be reduced to writing and signed by the members of the panel.

(c) Decisions shall be made by majority vote of the panel members. A panel member may express his disapproval of the majority decision by adding the word “dissenting” after

his signature on the award or said panel member may also prepare a dissenting opinion which shall be sent to the board's office and will be made part of the award proper.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-46. Award upon settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

(Effective January 30, 1981)

Sec. 31-91-47. Delivery of award

The award, incorporating the panel's decision, will be sent by first class mail to the parties.

(Effective January 30, 1981)

Sec. 31-91-48. Expenses

With the exception of the filing fee, arbitration services of the board are supplied to Connecticut employers and employee organizations without charge.

(Effective January 30, 1981)

Sec. 31-91-49. Communication with panel members

There shall be no communication concerning the pending case between the parties and the panel members after the chairman of the panel has declared the arbitration hearing or hearings closed. Any other oral or written communication, other than the briefs and reply briefs, from the parties to the panel members shall be directed to the director of the board for transmittal to the respective panel members. It shall be the duty of the board to notify a party of any communication of the other party.

(Effective January 30, 1981; Amended April 5, 1999)

Sec. 31-91-50. Repealed

Repealed April 5, 1999.

Sec. 31-91-51. Request for expedited arbitration

(a) Upon mutual request by both parties to a dispute, the board will process the dispute according to the following expedited arbitration procedure.

(1) There shall be no stenographic record;

(2) There shall be no briefs;

(3) There shall be no written opinion accompanying the award;

(4) A single arbitrator may hear the case at the option of the parties;

(5) All other requirements of the board's regulations concerning arbitration, which are not in conflict with this section, shall apply;

(6) Arbitrability may not be claimed; and

(7) Only one day of hearings shall be allowed for each case.

(Effective January 30, 1981; Amended April 5, 1999)

Mediation

Sec. 31-91-52. Purpose and scope of mediation services

Mediation is the use of third party neutrals to assist two contending parties to reach agreement on matters in dispute. The mediation services of the board are available to State employers and employee organizations for purposes of settlement of grievances or mediation of impasses in contract negotiations.

(Effective January 30, 1981)

Sec. 31-91-53. Appointment and powers of mediators

The full time mediators appointed by the Labor Commissioner, with the advice and approval of the board, shall be available to investigate and adjust labor disputes between State employers and employee organizations. Each mediator shall have all the powers of the board to enter establishments, to examine payrolls or other records, to issue subpoenas and to administer oaths.

(Effective January 30, 1981)

Sec. 31-91-54. Goals and duties of mediators

Every labor dispute is unique, therefore, no techniques or procedures can be established to govern the conduct of mediators in every dispute. However, to assure the parties the greatest degree of equity and professional conduct by mediators, the board and its mediators will adhere to the "Code of Professional Conduct for Labor Mediators" which has been adopted by the federal mediation and conciliation service and the association of labor relations agencies. In the performance of mediation services, mediators shall be responsible to the board.

(Effective January 30, 1981)

Sec. 31-91-55. Function of the board in strikes and lockouts

In cases where the board has knowledge of a potential or actual strike or lockout, the chairman of the board or a panel of said board shall establish communications with both parties to the controversy and endeavor by the process of mediation to secure a settlement of such strike or lockout.

(Effective January 30, 1981)

Sec. 31-91-56. Testimony by mediators

To maintain the effectiveness of mediation the parties must be assured that their discussions with mediators shall not be disclosed. Mediators shall not testify, even if

subpoenaed, concerning information disclosed during the mediation process.

(Effective January 30, 1981)

Fact Finding

Sec. 31-91-57—31-91-63. Repealed

Repealed April 5, 1999.

Rules of Procedure for Municipal Mediation Fact Finding, and Binding Interest Arbitration

Sec. 31-91-64. Notice of contract expiration; form; contents

(a) The board shall provide municipal employers with a notice form, which shall be completed by the municipal employer and returned to the board within thirty days after the approval of each municipal collective bargaining agreement.

(b) The information provided by the municipal employer on the notice form shall include, but shall not be limited to, the following:

(1) The name and address of the municipality and the name of the official who will represent the municipality in impasse resolution procedures.

(2) The name and address of the employee organization and the name of the official who will represent the employee organization in impasse resolution procedures.

(3) The approval date and expiration date of the contract.

(4) The number of employees covered by the contract.

(5) The subject matter and sections of the contract which may be subject to a reopener clause.

(Effective January 30, 1981)

Sec. 31-91-65—31-91-70. Repealed

Repealed April 5, 1999.

Agency
Connecticut Board of Labor Relations

Subject
Connecticut State Labor Relations Act

Inclusive Sections
§§ 31-101-1—31-101-79

CONTENTS

Connecticut State Labor Relations Act

Article I

Description of Organization and Definitions

Sec. 31-101-1. Creation and authority

The Connecticut State Board of Labor Relations was established in 1945 by section 31-102 of the Connecticut General Statutes and administers various labor relations statutes including the Connecticut State Labor Relations Act, sections 31-101 to 31-111, inclusive, of the Connecticut General Statutes.

The three board members are appointed by the Governor with the advice and consent of the General Assembly. Alternate board members shall be appointed pursuant to section 31-102(b) of the Connecticut General Statutes and shall serve in place of an absent member of the board when so directed by the board and while so serving shall have all of the powers of members of the board. Pursuant to section 31-103 of the Connecticut General Statutes, the board appoints an agent and a general counsel for four year terms of office, and may appoint such assistant agents and other employees as are needed to carry out the work of the board without undue delay.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-2. Functions

It is the function of the quasi-judicial board to enforce the collective bargaining statutes by deciding prohibited practice and representation cases. The board also promulgates regulations and exercises other powers necessary to the administration of the collective bargaining statutes under its jurisdiction.

The agent and assistant agents hold informal investigation and mediation conferences with parties to a complaint or petition in an effort to resolve the labor relations dispute before a board hearing. If settlement is not possible the agent may recommend dismissal of a complaint or assign the matter for a hearing before the board. The agent and assistant agents conduct secret ballot elections to determine the desire of employees for collective bargaining representation.

The general counsel is the legal advisor to the board and staff and represents the board in court appeals, enforcement proceedings and other judicial and administrative proceedings to which the board is a party or is interested.

(Effective May 7, 1980)

Sec. 31-101-3. Official address

All communications should be addressed to the State Board of Labor Relations, 38 Wolcott Hill Road, Wethersfield, Connecticut 06109.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-4. Public information

The public may inspect the regulations, decisions and public records of the board at its office in Wethersfield. There is no prescribed requests for information. Written requests should be submitted to the board at its above stated official address.

(Effective May 7, 1980)

Sec. 31-101-5. Signature of documents

The duly authorized and official documents of the board of every description, and without exception, including but not limited to the board decisions, orders, notices, subpoenas, and communications shall be signed in behalf of the board by any board member, the agent, the general counsel, or any staff member empowered to sign in the board's behalf. Such a signature shall be presumed to be duly authorized by the board unless and until the contrary is demonstrated in any board proceeding or hearing.

(Effective May 7, 1980)

Sec. 31-101-6. Definitions

The term "Act" as used herein means the Connecticut State Labor Relations Act, sections 31-101 to 31-111b, inclusive, of the Connecticut General Statutes, and the term "Board" means the Connecticut State Board of Labor Relations. The term "Filing" as used herein means the delivery of required documents(s) to the board's office address and any other means of delivery prescribed by the board. In proceedings under section 31-106 of the act, for election of representatives, the term Petitioner means the party filing a petition for such election and the term "Substantial number of employees" means, under ordinary circumstances, thirty per cent (30%)of the membership of the claimed unit. In proceedings under section 31-105 of the act, the party charging an unfair labor practice shall be called the Complainant; and the party alleged to have committed such unfair labor practice shall be called the Respondent. The terms defined in section 31-101 of the act have the same meanings in these regulations.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-7. Time limitations

Whenever the time limited in these regulations for any act is seven (7) days or more, Saturdays, Sundays, holidays and other days when the board's offices are closed to the public shall be included in making the computation. Whenever the time so limited is less than seven (7) days, such days shall be excluded in making the computation.

(Effective May 7, 1980; Amended October 11, 2013)

Article II

Procedures Under Section 31-106 of the Act—Election of Representatives

Sec. 31-101-8. Petition; filing

A petition for an election pursuant to section 31-106 of the act may be filed with the board by an employee or the employee's representative, or, in special circumstances under section 31-101-10 of these regulations, by an employer or the employer's representative. The petition shall be in writing. The original shall be signed and sworn to before any person authorized to administer an oath. The original petition shall be filed with the board. The petition shall include a certification also signed and sworn to before any person authorized to administer an oath, stating that a copy of the petition has been served upon the employer and any union claiming to represent the employees, by registered or certified mail or in person. If an employer files a petition it shall be served on all unions claiming to represent the employees. Petition forms will be supplied by the board upon request.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-9. Petition of employee or labor organization

(a) A petition, when filed by an employee, the employee's representative or a labor organization, shall contain the information required by the form supplied by the board, including the following:

(1) The name and address of the petitioner;

(2) the name and address of the employer or employers concerned and the general nature of the business;

(3) such information as the petitioner can secure concerning the approximate percentage of business or sales outside the state of Connecticut, and other facts concerning interstate commerce, if any;

(4) the approximate total number of employees;

(5) the types, classifications or groups of employees in the bargaining unit or units claimed to be appropriate, the number of employees therein, the names and addresses of any other individuals or labor organizations who claim to be the representatives of any of the employees in the alleged bargaining unit or units and a brief description of any contract covering any employees in such unit or units;

(6) an allegation that a question or controversy exists concerning representation;

(7) a request that the board certify the name or names of the representatives who have been designated or selected for the purposes of collective bargaining by the majority of the employees in the unit or units appropriate for such purposes; and

(8) an allegation that a substantial number of employees, as defined in section 31-101-6 of the Regulations of Connecticut State Agencies, (A) wish to be represented for collective bargaining by an employee organization as exclusive representative or (B) assert that the employee organization currently certified or recognized as the bargaining representative is no longer the representative of a majority of employees in the unit.

(b) If a petition has been filed with the board in compliance with subsections (1) to (8), inclusive, of this section, any other employee organization may file with the board a petition which states that ten (10%) percent or more of the employees have expressed in writing the desire to have the intervenor as exclusive representative and such petition for intervention shall be filed within fifteen (15) days of the initial petition and shall otherwise conform to the requirements specified in this section.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-10. Employer's petition; contents

Such petition, when filed by an employer or his representative, shall contain the information required by the form supplied by the board, including the following:

(a) the name and address of the petitioning employer;

(b) the general nature of the business and the approximate total number of employees;

(c) the approximate percentage of business or sales outside the state of Connecticut, and other facts concerning interstate commerce, if any;

(d) the types, classifications or groups of employees in the bargaining unit or units claimed to be appropriate, and the number of employees employed in such bargaining unit or units;

(e) the names and addresses of any individuals or labor organizations who claim to represent any of the employees in the alleged bargaining unit or units, and a brief description of any contract covering any employees in such unit or units;

(f) an allegation that a question or controversy exists concerning representation of employees between two or more labor organizations.

(Effective May 7, 1980)

Sec. 31-101-11. Petition; amendment or withdrawal

The board at any time may, before the first ballot is cast in an election, permit the amendment or withdrawal of the petition in whole or in part upon such conditions as the board may deem proper.

(Effective May 7, 1980)

Sec. 31-101-12. Duties of agent

(a) When a petition for an election has been filed, the agent shall confer with and may hold informal conferences with the interested parties and ascertain the facts. The agent shall ascertain whether a substantial number of employees desire the petitioner to represent them or whether a substantial number of employees wish to decertify an existing employee representative by making a card check or by such other appropriate means as the agent shall determine. In making a card check the agent may use the criteria set out in subsection (b) of this section. The agent shall encourage the parties to agree upon the appropriate unit and a suitable method by which the representative is to be determined by the board. In cases where the parties agree that an election be held to ascertain the wishes of the employees,

the agent shall as soon as possible conduct an election by secret ballot. In cases where the parties agree upon other suitable methods by which the representative is to be determined, the agent as soon as possible shall by such method ascertain the employee's wishes and report the agent's findings promptly to the board. Whenever the agent, after investigation, has reasonable cause to believe that a question of representation exists, including but not limited to finding that the parties are unable to agree upon the appropriate unit and he is unable to settle the controversy concerning representation, the agent shall issue a direction of election within 30 days of the investigation and conduct a secret ballot election within thirty (30) days of the issuance of the direction of election to determine whether and by which employee organization the employees desire to be represented. The election shall be conducted in accordance with the terms and conditions set forth in Sections 31-101-14, 31-101-14a, 31-101-15, and 31-101-16 of these regulations and the agent shall report the agent's action to the board. In the event that the agent determines that there is no reasonable cause to believe that a question of representation exists, the agent shall issue a recommendation to dismiss the petition within thirty (30) days after the investigation and report the agent's action to the board. In the event the agent is unable to determine whether or not a question of representation exists, the agent may, within 30 days of the agent's investigation, refer the petition directly to the board for a hearing without either having conducted an election or issuing a recommendation for dismissal, in which event the board shall conduct an appropriate hearing upon due notice as set forth in these regulations.

(b) Proof of an employee's desire with regard to representation may be established as follows:

The petitioner may present to the agent membership or application for membership cards or collective bargaining authorization cards.

The cards shall be dated and signed by the employees prior to the filing of the petition with the board, and shall contain the printed or typewritten name of the signer.

The cards will be void if signed more than a year before the filing of the petition with the board.

The card itself shall indicate the employee's desire with regard to representation.

(c) If the agent determines either to conduct a secret ballot election or to recommend dismissal of the petition, the parties may object to the agent's determination by filing objections in the form of a brief within fourteen (14) days of the service of the order directing an election or within 14 days of the agent's recommendation for a dismissal filed with the board. Briefs shall be certified to all parties.

(d) If objections are timely filed, the agent shall prepare a record for the board which shall include the following: the petition, the agent's order directing an election, or the agent's recommendation for dismissal and any briefs filed by a party.

(e) The board, after considering the agent's direction of election or the agent's recommendation for dismissal, together with the briefs submitted, shall as appropriate within thirty (30) days of receiving the record:

(1) Issue an order confirming the agent's direction of election and certifying the election

results,

(2) issue an order confirming the agent's recommendation for dismissal,

(3) order further investigation, or

(4) order a hearing.

(f) In the event the agent has directly referred the petition to the board for a hearing without either directing an election or recommending dismissal or if the board has ordered a hearing, a hearing will be held pursuant to Section 31-101-13.

(g) If no objections are filed, the board shall certify the results of the election or dismiss the petition.

(Effective October 5, 1993; Amended October 11, 2013)

Sec. 31-101-13. Hearing; notice; ascertainment of desires of employees

When a hearing has been ordered, the board shall hold such hearing upon reasonable notice and may either dismiss the petition or direct an election or elections, or use other suitable methods to ascertain the wishes of employees. When a hearing has been directed, the board or its agent shall prepare and cause to be served upon the parties a notice of hearing before the board, at a time and place fixed therein. Hearings relative to petitions for representation elections shall have precedence over all other cases. A copy of the petition shall be served with the notice of hearing.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-14. Elections; terms and conditions

(a) If the board or the agent determines that an election shall be held, it shall order that such election or elections shall be conducted by the agent, an assistant agent, or by such other person as may be designated by the board or the agent.

(b) All elections shall be held at such times and places and upon such terms and conditions as the board or the agent may specify. All elections ordered by the board or the agent shall be by secret ballot.

(c) The employees eligible to vote shall be those on the payroll on the date of filing of the petition, or such other date as the board or the agent may order upon the showing of extraordinary circumstances or by consent of the parties, and who remain on the payroll on the date of the election.

(d) At least seven (7) days prior to the election the employer shall furnish to each labor organization which is a party to the proceeding, a list of the names and addresses of the employees in the appropriate unit who were on the payroll on the date of the filing of the petition, or such other date as the board or the agent may order upon the showing of extraordinary circumstances or by consent of the parties, and who are on the payroll at the time of the submission of the list.

(e) Unless mutually agreed otherwise, at least three (3) business days prior to the election, the employer shall post, in conspicuous places where the employees eligible to vote customarily assemble, copies of the notice of election as provided by the board. Nothing

herein shall be deemed to prevent an employer from posting such election notices earlier.

(Effective October 5, 1993; Amended October 11, 2013)

Sec. 31-101-14a. Interference

(a) During the course of a representation campaign, the following conduct may interfere with the rights of employees and may result in the setting aside of the election. Examples of such conduct include, but are not limited to, the following:

(1) Threatening loss of jobs or other disadvantages by employer or union.

(2) Misstating important facts by a union or an employer where the other party does not have a fair chance to reply.

(3) Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises.

(4) An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity.

(5) Threatening physical force or violence to employees by a union or an employer to influence their votes.

(6) Failing to provide information in accordance with section 31-101-14(d) of the Regulations of Connecticut State Agencies.

(7) Failing to post notices of election in accordance with section 31-101-14(e) of the Regulations of Connecticut State Agencies.

(b) in the absence of extraordinary circumstances, a party having knowledge of grounds for objection to an election is required to make the party's objection to the agent prior to the election. Failure to do so may result in a waiver of the right to raise the objection.

(Effective October 11, 2013)

Sec. 31-101-15. Challenged ballots

At any election, whether ordered by the board or held by consent of the parties, if the right of an employee to vote is challenged by the board, the agent or any party to the proceeding, the employee shall be permitted to vote, but the employee's ballot shall be sealed by him in a separate envelope provided for such purpose and the employee shall then deliver the envelope to the agent or person duly designated by the board or the agent to conduct the election, who shall deliver the challenged ballot to the board for determination, provided, if the challenged ballots are insufficient in number to affect the result of the election, no determination with respect to them shall be made.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-16. Procedure following elections; challenges and objections

(a) Upon the conclusion of any election or elections, whether ordered or by consent, the board or its agent or a person duly designated by the board to conduct the election shall prepare a report as to the result of the election or elections and, in cases where the right of an employee to vote has been challenged and the challenged ballots are sufficient in number

to affect the result of the election, the report shall contain a plain statement of the grounds for the challenge. The agent shall cause this report to be served upon the parties.

(b) Not later than five (5) days after the conclusion of the election, any party who intends to make an objection to the conduct of the election shall serve upon all other parties, with proof of service, and file with the board an original and four (4) copies of objections to the election or elections or to the report thereon. The objections shall contain a plain statement of the grounds of objection. The board may, either with or without a hearing, make its determination with respect to the objections or to any challenged ballots. Any defect in making objections warrants their dismissal by the board but shall not deprive the board of jurisdiction to entertain the objections in spite of such defect wherever the board deems that justice so requires.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-17. Certification of representatives

The board, after ascertaining the wishes of the employees, shall certify to the parties the name or names of the representatives or make other disposition of the matter. The board shall not issue a certification unless the wishes of the employees have been ascertained by secret ballot election.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-18. Certification; duration

Except in extraordinary circumstances, the board will not act favorably upon a petition for an election within one year after the certification of a representative by the board.

(Effective May 7, 1980)

Article III

Procedure Under Sections 31-105 and 31-107 of the Act— Unfair Labor Practices

Sec. 31-101-19. Charge

A charge that any person has engaged in or is engaging in any unfair labor practice may be made by any person, his representative, or labor organization.

(Effective May 7, 1980)

Sec. 31-101-20. Charge; form and filing

A charge shall be in writing. The original shall be signed and sworn to before any person authorized to administer an oath. The original and four (4) copies of the charge shall be filed with the board. The charge shall include a certification also signed and sworn to before any person authorized to administer an oath stating that a copy of the charge has been served upon the respondent by registered or certified mail or in person. Blank forms for making

the charge will be supplied by the board upon request.

(Effective May 7, 1980)

Sec. 31-101-21. Contents of charge

(a) the full name and address of the person or labor organization making the charge;

(b) the full name and address of the employer or employers against whom the charge is made;

(c) upon information and belief, the general nature of the employer's business and the approximate total number of its employees;

(d) such information as the person making the charge can secure concerning the approximate percentage of business or sales outside the state of Connecticut, and other facts concerning interstate commerce, if any;

(e) an enumeration of the subdivision or subdivisions of section 31-105 claimed to have been violated by the employer or employers with a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the appropriate dates and places of such acts and names of respondent's agents or other representatives by whom committed; or if, in any such case, the required specification is impossible, the reason why it is impossible. Other facts shall be stated which are sufficient to describe the nature of the conduct complained of.

(Effective May 7, 1980)

Sec. 31-101-22. Withdrawal of charge

A charge, or any part thereof, may be withdrawn only with the consent of the board and upon such conditions as the board may deem proper.

(Effective May 7, 1980)

Sec. 31-101-23. Amendment of charge; not part of complaint

A charge, or any part thereof, may be amended at any time before the issuance of the final decision and order of the board. A charge shall not be part of the complaint provided for in section 31-101-27 hereof.

(Effective May 7, 1980)

Sec. 31-101-24. Investigation of charges

All charges filed with the board shall be diligently investigated by the agent. He shall confer and may hold informal conferences with the interested parties and ascertain the facts. He shall encourage the parties to make voluntary adjustments and compliances with the spirit and policy of the act.

(Effective May 7, 1980)

Sec. 31-101-25. Report to board in cases where no complaint is to issue

If, after investigation of the charges filed, the agent considers that there has been no

violation of the act, he shall report in writing to the board, stating fully his reasons and recommendations.

(Effective May 7, 1980)

Sec. 31-101-26. Notice of reasons for failing to issue complaint; review

Upon filing such report the agent shall serve a copy of his reasons for failing to issue a complaint on the party filing the charge and on the party against whom the charge is filed. Any aggrieved party may obtain a review of the agent's action by filing a request therefor with the board within fourteen (14) days from the service of the agent's reasons for failing to issue a complaint and shall serve a copy thereof upon the other interested party or parties at the same time. Such request shall contain a complete statement setting forth the facts and reasons upon which the request for review is based.

(Effective May 7, 1980)

Sec. 31-101-27. Complaint and notice of hearing

After the agent has investigated a charge referred to him by the board or any other violation of the act which has come to his attention, and if he finds reasonable ground for any charge or considers that there is or has been a violation of the act, he shall issue and serve upon the person complained of a complaint stating the charges and containing a notice of hearing before the board at the time and place therein fixed, to be held not less than seven (7) days after the service of such complaint. Notice of the hearing together with a copy of the complaint shall be given to the person, his representative or labor organization filing the charge.

(Effective May 7, 1980)

Sec. 31-101-28. Acceleration of hearing

The parties to the proceedings may consent by written stipulation to a hearing within less than seven (7) days after the service of the complaint.

(Effective May 7, 1980)

Sec. 31-101-29. Amendment to complaint

Any such complaint may be amended by the agent at any time before final decision or order, or by the party filing the charge during the course of a hearing, with the permission of the board, upon such terms and conditions as it deems just.

(Effective May 7, 1980)

Sec. 31-101-30. Withdrawal of complaint

Any such complaint may be withdrawn by the board on its own motion or on the motion of the agent at any time before final decision or order upon notice to all parties.

(Effective May 7, 1980)

Sec. 31-101-31. Service and filing of answer

The respondent against whom the complaint is issued shall have the right to file an answer thereto within five (5) days from the service of the complaint. Such answer shall be in writing, the original being signed by the respondent or his, or its, attorney. The respondent or his, or its, attorney shall file the answer and four (4) copies with the board and serve copies of the answer on each party to the proceeding.

(Effective May 7, 1980)

Sec. 31-101-32. Denial

The respondent shall admit or deny each of the allegations contained in the complaint unless the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, in which case the respondent shall so state, such statement operating as a denial. The answer may contain a plain statement of any explanation or new matter which constitutes the grounds of defense.

(Effective May 7, 1980)

Sec. 31-101-33. Defense and new matter

Any allegation of new matter contained in the answer is to be deemed denied or avoided without the necessity of a reply.

(Effective May 7, 1980)

Sec. 31-101-34. Extension of time to answer; amendment

Upon the board's own motion or upon application of the respondent, the board may extend the time within which the answer may be filed. The answer may be amended at any time with the permission of the board, upon such terms and conditions as it deems just.

(Effective May 7, 1980)

Sec. 31-101-35. Amendment of answer following amendment of complaint

In any case where a complaint has been amended, the respondent shall have an opportunity to amend his answer within such period as may be fixed by the board.

(Effective May 7, 1980)

Sec. 31-101-36. Failure to file answer

Notwithstanding any failure of the respondent to file an answer within the time provided in section 31-101-31 hereof, the board may proceed to hold a hearing at the time and place specified in the notice of the hearing, and may make its findings of fact and enter its order upon the testimony so taken. In any case where a respondent fails to answer and appear at the hearing the board may take the allegations in the complaint as admitted and may issue an appropriate order.

(Effective May 7, 1980)

Sec. 31-101-37. Pleadings; construction

All pleadings shall be liberally construed.

(Effective May 7, 1980)

Sec. 31-101-38. Compliance proceedings

(a) After a board order has been issued or after enforcement of such order by the Superior Court, if informal efforts to dispose of the matter prove unsuccessful, the agent is then authorized in the agent's discretion to issue a specification in the name of the board and a notice of hearing before the board, both of which shall be sent by registered or certified mail to the parties involved. The specification sets forth the relief owed, including but not limited to the computations showing the amount of back pay or other monetary relief due and any other pertinent information. Each party shall file an answer within fifteen (15) days of the receipt of the specification setting forth a particularized response including, when appropriate, alternative computation showing the amount of back pay or other monetary relief due and any other pertinent information.

(b) In the alternative, and in his discretion, the agent under the circumstances specified above, may issue and send to the parties a notice of hearing only without a specification. Such notice shall contain in addition to the time and place of hearing before the board, a brief statement of the matters in controversy.

(Effective May 7, 1980; Amended October 11, 2013)

Article IV

Miscellaneous Proceedings

Sec. 31-101-39. Declaratory ruling; form of petition

Whenever there is a substantial and immediate threat to rights protected by the Connecticut State Labor Relations Act a person or organization may request a declaratory ruling by the board with respect to the applicability to such person or organization of any statute, regulation, or order enforced, administered or promulgated by the board in the following form:

(a) A petition stating the factual background of the issue must be in writing and sent to the board by mail or delivered in person during normal business hours.

(b) The petition shall be signed by a person or representative of an organization in whose behalf the inquiry is made and shall state the address of such person or organization and the name and address of the petitioner's attorney, if applicable.

(c) A petitioner shall send a copy of the petition by registered or certified mail to any person or organization that may be immediately affected by the petition. The petition shall state the persons or organizations so notified. If the petitioner is in doubt as to who should be notified it may apply to the board for an order of notice.

(d) The petition shall state clearly and concisely the substance and nature of the request. It shall identify the statute, regulation or order concerning which the request is made and

shall identify the particular aspect thereof to which the question of applicability is directed.

(e) The petition shall state the position of the petitioner with respect to the question of applicability.

(f) The petition or brief attached thereto may include an argument in support of the position of the petitioner with such legal citation as may be appropriate.

(Effective May 7, 1980)

Sec. 31-101-40. Declaratory ruling; procedure after filing

(a) The board may give notice to any other person or organization that such a declaratory ruling has been requested and may receive and consider facts, arguments, and opinions from persons other than the petitioner.

(b) If the board deems a hearing necessary or helpful in determining any issue concerning the request for declaratory ruling, the board shall schedule such hearing and give such notice thereof as shall be appropriate.

(Effective May 7, 1980)

Sec. 31-101-41. Scope of bargaining determination

Any employee organization, employer, or arbitrator may request the board to determine the scope of collective bargaining if

(1) during the course of collective negotiations one party seeks to negotiate with respect to a matter or matters which the other party contends is not a mandatory subject for collective negotiations or

(2) a party alleges that an illegal subject of bargaining is improperly submitted to a grievance arbitrator. A request for such a determination shall be submitted to the board in the same form as a request for a declaratory ruling and shall be subject to the same procedure. If such a request has the effect of delaying negotiations or arbitration, the board shall make every effort to expedite the proceeding.

(Effective May 7, 1980)

Sec. 31-101-42. Petitions concerning adoption of regulations

(a) Any person or organization may at any time petition the board to promulgate, amend or repeal any regulation. The petition shall set forth clearly and concisely the text of the proposed regulation, amendment, or repeal. Such petition shall also state the facts and arguments that favor the action it proposes by including such data, facts and arguments in the petition or in a brief annexed thereto. The petition shall be signed by the petitioner and shall furnish the address of the petitioner and the name of petitioner's attorney, if applicable.

(b) Within thirty (30) days following receipt of the petition, the board shall determine whether to deny the petition, or to initiate regulation making proceedings in accordance with the petition. If the petition is denied, the petitioner shall be notified in writing of the reasons for said denial.

(Effective May 7, 1980)

Sec. 31-101-43. Settlement of cases

Informal disposition may be made of any complaint or petition by stipulation, agreed settlement, consent order, or default.

(Effective May 7, 1980)

Sec. 31-101-44. Pre-trial hearings

Prior to any scheduled hearing the board or agent may order the parties to meet with a board member, agent or other staff member for the purpose of obtaining stipulations of fact, joint exhibits, disclosure of evidence and identification of witnesses and issues to be raised at the formal hearing. Failure to disclose evidence, witnesses or issues at the pre-trial hearing may result in the board's denying the introduction of such evidence, testimony or issues at the formal hearing.

(Effective May 7, 1980)

Article V

General Provisions Relating to Parties and Procedure Applicable to All Proceedings

Sec. 31-101-45. Quorum of board

A vacancy in the board, or the absence or disqualification of a member of the board, shall not impair the right of the remaining members to exercise all of the powers of the board, and two members of the board shall at all times constitute a quorum.

(Effective May 7, 1980)

Sec. 31-101-46. Nonjoinder and misjoinder of parties

No proceeding under the act will be dismissed because a person directly concerned is not a party thereto. If it is necessary for the determination of the matter in dispute so to do, the board may allow parties to be added or substituted and unnecessary parties to be dropped at any time in the proceeding.

(Effective May 7, 1980)

Sec. 31-101-47. Parties; relief

All persons alleged to have engaged in any unfair labor practices may be joined as respondents, whether jointly, severally or in the alternative, and a decision may be rendered against such one or more of the respondents upon all the evidence. The board may award any relief appropriate under law and based on the facts found proven, and shall not be limited to the relief demanded.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-48. Motions during hearing

All motions made at a hearing shall be stated orally, shall be included in the stenographic

report of the hearing, and shall be decided by the board, except that motions made to intervene shall be made in the manner set forth in section 31-101-51 of these regulations. All motions, rulings, decisions and orders shall be and become part of the record in the proceeding.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-49. Motion made before or after hearing

All motions made, other than those made during a hearing or hearings, shall be filed in writing with the board and shall state the order or relief applied for and the grounds for such motion. The moving party shall serve copies of all such papers on all parties and shall, within three (3) days thereafter, file an original with proof of due service and four (4) copies of all papers with and for the use of the board. Answering statements, if any, shall be served on all parties and an original thereof with proof of due service and four (4) copies shall be filed with the board within three (3) days after service of the moving party or parties, unless otherwise directed by the board. All motions shall be decided by the board upon the papers filed with it, unless the board, in its discretion, decides to hear oral argument or take testimony, in which event the board shall notify the parties of such fact and of the time and place for such argument or for the taking of such testimony.

(Effective May 7, 1980)

Sec. 31-101-50. Waiver of objections

Any objection not duly urged before the board shall be deemed waived unless the failure or neglect to urge such objection is excused by the board because of extraordinary circumstances.

(Effective May 7, 1980)

Sec. 31-101-51. Intervention; procedure; contents; filings and service

Any person, employer or labor organization desiring to intervene in any proceeding shall file with the board a sworn petition and four (4) copies thereof in writing, setting forth the facts upon which such person, employer or labor organization claims an interest in the proceeding. Such petition shall be served on all the parties. Petitions shall be filed with the board with proof of service at least two (2) days prior to the first hearing. Failure to serve or file such petition as above provided shall be deemed sufficient cause for the denial thereof, unless it is determined that good and sufficient reason exists why it was not served or filed as herein provided. The board shall rule upon all such petitions and may permit intervention to such an extent and upon such terms or conditions as it determines may effectuate the policies of the act.

(Effective May 7, 1980)

Sec. 31-101-52. Consolidation or severance

Two or more proceedings under sections 31-105, 31-106 and 31-107 of the act may be

consolidated by the board in its discretion and such proceedings may be severed by the board in its discretion.

(Effective May 7, 1980)

Sec. 31-101-53. Witnesses; examination; record; depositions

Witnesses at all hearings shall be examined orally, under oath or affirmation, and a record of the proceedings shall be made and kept by the board. Where a witness resides outside the state or through illness or other cause is unable to testify before the board, his testimony or deposition may be taken within or without the state in such manner and in such form as may be directed by the board. All applications for the taking of such testimony or depositions shall be made at all times by motion to the board in accordance with the motion practice herein set forth.

(Effective May 7, 1980)

Sec. 31-101-54. Application for subpoenas

Any party to the proceeding may apply to the board for the issuance of a subpoena or subpoenas duces tecum, requiring the attendance during a hearing of any person, party or witness and directing the production at a hearing of any books, records or correspondence or other evidence relating to any matter under investigation or any question before the board. Such application shall be timely, shall be in writing and shall specify the name of the witness or the documents or things, the production of which is desired, with such particularity as will enable such documents to be identified for purposes of production and the return date desired. Such application shall be made and filed with the board and need not be served on any other party. Any subpoena issued by the board shall be mailed or delivered forthwith to the party applying therefor. Arrangements for the service of the subpoena, according to law, shall be made by such party.

(Effective May 7, 1980)

Sec. 31-101-55. Issuance of subpoenas for production of books, papers and other matters

Upon proper application the board shall issue subpoenas at any time, requiring persons, parties or witnesses to attend or be examined or give testimony and to produce any books, records, correspondence, documents or other evidence that relate to any matter under investigation or any question before the board.

(Effective May 7, 1980)

Sec. 31-101-56. Witness fees

Witnesses summoned before the board or its agent shall be paid the same fees and mileage that are paid witnesses in the courts of the state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the state. Witness fees and mileage shall be paid by the party

at whose instance the witnesses appear and shall be paid by the board when they appear by the board's instance, and the person taking the deposition shall be paid by the party at whose instance the deposition is taken or by the board if the deposition is taken at its instance.

(Effective May 7, 1980)

Sec. 31-101-57. Hearings

A hearing for the purpose of taking testimony upon a complaint, upon a complaint and answer or upon a petition for an election shall be conducted by the board. Such hearings shall be open to the public.

(Effective May 7, 1980)

Sec. 31-101-58. Hearings; powers and duty of the board

During the course of any hearing, the board shall have the full authority to control the conduct and procedure of the hearings, and the records thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections made during the course of the hearing. The board shall see that a full inquiry is made into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. In any hearing, the board shall have the right to call and examine witnesses, to direct the production of papers or documents and to introduce into the record such papers or documents.

(Effective May 7, 1980)

Sec. 31-101-59. Examination of witnesses; introduction of evidence

In any hearing, the agent and all parties shall have the right to call, examine and cross-examine witnesses and to introduce into the record papers and documents or other evidence subject to the ruling of the board. Each party shall provide four (4) copies of each paper, document or other evidence it wishes to submit to the board, and sufficient additional copies for each party to the proceeding.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-60. Hearings; evidence

The board shall not be bound by technical rules of evidence. All findings of the board as to facts, however, shall be supported by substantial evidence.

(Effective May 7, 1980)

Sec. 31-101-61. Hearing; stipulations

At a hearing, stipulations may be introduced in evidence with respect to any issue, subject to the ruling of the board.

(Effective May 7, 1980)

Sec. 31-101-62. Continuation, adjournment or postponement of hearing

(a) In the discretion of the board, the hearing may be continued from day to day or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the board or by other appropriate notice designated by the board.

(b) Where the board has scheduled an initial hearing, a party may within ten (10) days of receipt of the hearing notice request one postponement per case by: (1) Obtaining from the opposing party an agreement for the postponement, (2) confirming a new mutually acceptable hearing date, and (3) notifying the board of the agreement to postpone and the new mutually acceptable hearing date. Unless the parties have agreed on a postponement and a new hearing date and have so notified the board within ten (10) days, the request for postponement shall be granted by the board only where the requesting party or parties have demonstrated to the board that there is sufficient cause for such postponement.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-63. Contemptuous conduct at hearing

Any person who engages in contemptuous conduct before the board may in the discretion of the board be excluded from the hearing room or further participation in the proceeding.

(Effective May 7, 1980)

Sec. 31-101-64. Waiver of hearing and consent order

(a) Nothing in these regulations shall prevent the entry of an order with the consent of the respondent, and on notice to all parties and without the holding of any hearing or the making of any findings of fact or conclusions of law, if the respondent waives the holding of any hearing and making of the findings of fact and conclusions of law.

(b) Nothing in these regulations shall prevent the parties from agreeing to submit stipulations of facts and evidence.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-65. Oral argument or briefs; requests for findings of fact or conclusions at the close of hearings

(a) In all hearings under sections 31-106 and 31-107 of the Connecticut General Statutes, the board may in its discretion permit the parties to argue orally before it at the close of the hearings or to file briefs, requests for findings of fact or conclusions with it. The time for oral argument, filing briefs or requests for findings of fact or conclusions shall be fixed by the board. Any request for oral argument before the board shall be submitted at the close of the hearing. The granting or denial of permission to argue orally before the board shall be within the discretion of the board. Arguments shall be included in the stenographic report unless the board directs otherwise.

(b) Briefs are to be submitted in accordance with the following procedure: (1) An original and four (4) copies shall be filed with the board on or before the due date of the brief; (2) all briefs shall contain a certification that a copy of the brief was supplied to other counsel

or parties of record at the time the brief is filed with the board; and (3) requests for postponement of briefs shall be directed to the office of the general counsel and shall be in writing, stating the reasons for the request and setting forth the respective positions of all parties of record with regards to the request.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-66. Variance between pleading and proof

(a) A variance between an allegation in a petition for an election or a pleading in an unfair labor practice proceeding and the proof will be considered immaterial unless it prejudicially misleads any party or the board. Where a variance is not material, the board may admit such proof and the facts may be found accordingly. Where a variance is material, the board may permit an amendment at any time before the final order of the board, upon such terms as it deems just. Any party or the board may move to conform the pleadings to the proof.

(b) The board shall disregard all defects in pleading and procedure wherever this may be done without impairing the substantial rights of any party, if justice so requires.

(Effective May 7, 1980)

Sec. 31-101-67. Motions and objections at hearings

Motions made during the hearing and objections with respect to the conduct of the hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing.

(Effective May 7, 1980)

Sec. 31-101-68. Motion to reopen hearing

No motion for leave to reopen a hearing because of newly discovered evidence shall be entertained unless it is shown that such additional evidence is material, that the motion has been timely made and that there were reasonable grounds for the failure to adduce such evidence at the hearing. Nothing contained in this section shall be deemed to limit the right and power of the board in its discretion and on its own motion to reopen a hearing and take further testimony.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-69. Findings of fact; conclusions of law; decision and order; exceptions

The board shall at any time after the close of a hearing under section 31-107 of the act issue its findings of fact, conclusions of law, decision and order. Such findings of fact, conclusions of law, decision and order shall contain, but need not be limited to:

(a) a statement of the case and preliminary procedure before the board;

(b) findings of fact;

(c) conclusions of law;

(d) decision and order.

(Effective May 7, 1980)

Sec. 31-101-70. Record of proceedings before the board; unfair labor practice cases

(a) The record of the proceedings before the board in unfair labor practice cases shall consist of the charge or amended charge, the pleadings, notices of hearing, motions, orders, stenographic report, exhibits, depositions, findings of fact, conclusions of law, the decision and order.

(b) If an unfair labor practice proceeding is predicated in whole or in part upon a prior representation proceeding, the record of such prior representation proceeding shall be deemed a part of the record in the unfair labor practice proceeding for all purposes.

(Effective May 7, 1980)

Sec. 31-101-71. Records of proceedings before the board; representation cases

The record of the proceedings before the board in representation cases shall consist of the petition or amended petition, notices of hearing, the agent's recommendation for dismissal of petition or direction of election, motions, orders, agreements, stenographic report, exhibits, decision and direction of election, report on secret ballot, objections thereto, certification, dismissal or decision and order.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-72. Public record

The record as defined in sections 31-101-70 and 31-101-71 hereof shall constitute the public record of the case and shall be made available for inspection or copying under such conditions as the board may prescribe.

(Effective May 7, 1980)

Sec. 31-101-73. Practice before the board

Any person who at any time has been a member of or employed by the board shall not be permitted to appear as attorney or representative for any person, firm, corporation or organization until the expiration of one (1) year from the termination of such person's employment with the board, nor shall such person at any time be permitted to appear in any case which was pending before the board during the period of such person's employment with the board.

(Effective May 7, 1980; Amended October 11, 2013)

Article VI

Service of Complaints, Orders and Other Processes

Sec. 31-101-74. Service of documents by the board and agent

Complaints, decisions and orders and other processes and papers of the board and agent may be served personally, by registered or certified mail or by leaving a copy thereof in the principal office or place of business of persons to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same and the return post office receipt, when registered or certified and mailed as aforesaid, shall be proof of service of the same.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-75. Service by a party

Service of papers by a party to the proceeding shall be made by registered or certified mail, first class mail, postage prepaid or in person. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of such service. When service is made by registered or certified mail, the return post office receipt shall be proof of service.

(Effective May 7, 1980; Amended October 11, 2013)

Sec. 31-101-76. Service upon attorney

If a party appears by his or its attorney, all papers other than the complaint, notice of original hearings and final decisions and orders may be served, as herein provided, upon such attorney with the same force and effect as though served upon the party.

(Effective May 7, 1980)

Article VII

Construction, Amendment and Application

Sec. 31-101-77. Construction of regulations

These regulations shall be liberally construed and shall not be deemed to limit the powers conferred upon the board by the act.

(Effective May 7, 1980)

Sec. 31-101-78. Amendment of regulations

Any regulation may be amended or rescinded by the board at any time, in the manner provided by statute.

(Effective May 7, 1980)

Sec. 31-101-79. Application of regulations

These regulations and any amendments thereto shall govern all proceedings filed with the board on or after the effective date of these regulations and all other proceedings then pending, except to the extent that, in the judgment of the board, their application to such pending proceedings would not be feasible or would work an injustice, in which event these regulations shall not apply.

(Effective May 7, 1980)

Agency

Commission on Human Rights and Opportunities

Subject

Fair Employment Practices Act

Inclusive Sections

§§ 31-125-1—31-125-57

CONTENTS

Fair Employment Practices Act

Sec. 31-125-1—31-125-57. Repealed

Repealed January 1, 1993.

See §§ 46a-54-1—46a-54-153.

Agency

Department of Labor

Subject

Establishing, and Defining the Special Role of, the Connecticut Governor's Committee on Employment of People with Disabilities

Inclusive Sections

§§ 31-136-1—31-136-6

CONTENTS

Establishing, and Defining the Special Role of, the Connecticut Governor's Committee on Employment of People with Disabilities

Sec. 31-136-1. Definitions (Repealed)

Repealed June 11, 2014.

(Effective February 5, 1991; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-136-2. Establishment of the governor's committee (Repealed)

Repealed June 11, 2014.

(Effective February 5, 1991; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-136-3. Duties of the governor's committee (Repealed)

Repealed June 11, 2014.

(Effective February 5, 1991; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-136-4. Composition of the governor's committee (Repealed)

Repealed June 11, 2014.

(Effective February 5, 1991; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-136-5. Appointment of members of the governor's committee (Repealed)

Repealed June 11, 2014.

(Effective February 5, 1991; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-136-6. Duties of the commissioner (Repealed)

Repealed June 11, 2014.

(Effective February 5, 1991; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Agency
Department of Labor

Subject
Unemployment Compensation

Inclusive Sections
§§ 31-222-1—31-222-17

CONTENTS

Unemployment Compensation

Sec. 31-222-1. Agricultural labor

The term "agricultural labor", within the meaning of section 31-222 of the general statutes, includes all services performed (1) By an employee, on a farm, in connection with the cultivation of the soil, the harvesting of crops, or the management of livestock, bees and poultry; or (2) by an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute "agricultural labor," however, unless they are performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations. As used herein, the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit and truck farms, plantations and orchards. Lumbering and the cutting of wood for sale are not included within the exception unless carried on as an incident to ordinary farming operations.

Sec. 31-222-2. Casual labor

In order to be excepted from coverage, within the meaning of section 31-222(a)(5)(G) of the general statutes, labor shall be both casual and not in the course of the employer's trade or business. Generally the labor is "casual" if it is occasional and incidental and occurs irregularly; and is "not in the course of the employer's trade or business" if it does not readily appear to advance, promote or further the trade or business of the employer.

Sec. 31-222-3. Wages

The term "wages" means all remuneration for employment, whether paid in money or something other than money. The name by which such remuneration is designated is immaterial. Thus, salaries, commissions on sales or on insurance premiums, fees and bonuses are wages within the meaning of the act if payable by an employer to his employees as compensation for services not excepted by the law. The basis upon which the remuneration is payable, the amount of remuneration and the time of payment are immaterial in determining whether remuneration constitutes "wages." Thus, it may be payable on the basis of piecework, or a percentage of profits; and it may be payable hourly, daily, weekly, monthly or annually. Tips or gratuities and profits may be "wages." The medium in which the remuneration is payable is also immaterial. It may be payable in cash or in something other than cash, such as goods, lodging, food and clothing. Any payments made by an employer to an employee who is on leave of absence for military training are excluded from "wages" if the employer is not legally bound by contract, statute or otherwise to make such payments. The term "wages" does not include the amount of any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of the employee's tax imposed by section 1400 of the Federal Insurance

Contributions Act.

Sec. 31-222-4. Method of estimating cash value of board and room

Wages are defined in section 31-222(b) of the general statutes as "all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash." If board and/or lodging are given as part of the contract of hire, the administrator may determine in individual cases the cash value of such board and lodging for the purpose of computing wages of such employee. Where a cash value for board and lodging furnished an employee is agreed upon in any contract of hire, the amount so agreed upon shall, if more than the rates prescribed herein, as deemed the value of such board and lodging. Otherwise, until and unless in a given case a rate for board and lodging is determined by the administrator, board and lodging which form any part of the employee's contract of hire shall be included for the purpose of computing his wages at the maximum established by the minimum wage regulations currently in force and as, from time to time, amended. These regulations* provide the following maximum cash values:

Full meal	$ .60
Light meal	.35
Lodging-single room, per week	4.00
per day	.60
Lodging-shared room, per week	3.00
per day	.45

A full meal shall provide to the employee a variety of wholesome nutritious food and shall include adequate portions of at least one of the types of food from four of the following groups: (1) Fruit juice or soup; (2) fruit or vegetables; (3) bread, cereal or potatoes; (4) eggs, meat, fish (or a recognized substitute); (5) beverage; (6) dessert. A light meal shall be a meal which does not meet the qualifications of a full meal as herein defined but does provide to the employee adequate portions of wholesome nutritious food, and does include one of the types of food from at least three of the following groups: (1) Fruit, fruit juice, soup; (2) cereal, bread (or a recognized substitute); (3) eggs, meat, fish, including sandwiches made thereof (or a recognized substitute); (4) dessert; (5) beverage. Where lodging consisting of more than one room is provided, the administrator shall establish a reasonable value for such lodging.

* See minimum wage regulation 31-60-3.

Sec. 31-222-5. Reporting tips and gratuities (Repealed)

Repealed October 31, 1967.

Sec. 31-222-5a. Tips and gratuities

(a) Whenever tips or gratuities are paid directly to an employee by a customer of an

employer, the amount thereof which is accounted for by the employee to the employer shall be considered wages.

(b) In determining whether tips or gratuities are accounted for, it shall be considered that the reporting by an employee, for social security purposes, of tips or gratuities received from customers is an accounting for the quarter reported by the employee.

(c) In determining wages of employees who customarily receive tips or gratuities, it shall be considered that amounts charged to customers as a "service charge" and subsequently distributed by an employer to waiters and other employees are wages.

(d) The amount of any tips which are claimed by an employer as a credit against the minimum wage for any individual as provided in chapter 558 of the general statutes, as amended, and the regulations applicable thereto shall constitute wages of such individual and be reported as such, unless the individual has certified a greater amount of tips received. The wages reported for any employee shall in no event be less than the minimum wage provided by law.

(See G.S. § 31-222(b).)

(Effective October 31, 1967)

Sec. 31-222-6. Employers becoming subject who were not previously subject

(a) An employer, upon becoming subject to the unemployment compensation act under the provision of section 31-223 of the general statutes, shall give written notice to the administrator within fifteen days. For the purpose of determining whether an employer is subject to the act, all employees shall be counted regardless of the length of time employed, the amount of compensation or the basis of compensation. The rank or title of an employee is immaterial, but directors of a corporation are not employees of such corporation if the services which they render are united to attendance at and participation in meetings of the board of directors. Officers of a corporation who receive any remuneration or whose personal accounts are credited shall be counted as employees during each week of the calendar year.

(b) In determining whether a particular number of individuals is employed during a particular number of weeks, it is immaterial whether the same individuals are employed during each of such weeks. The phrase "at the same time" means during the same calendar week.

(c) In determining what constitutes "substantially all of the assets, organization, trade or business of another employer," the administrator shall be guided in his determination by the ordinary rules of commercial practice, the terms of the contract of sale, the disposition of the good will of the business and such other factors as may be relevant. The prime question is whether the acquisition resulted in a substantial continuation of the same or a like business.

(d) In determining whether or not a business was, at a given time, owned or controlled, directly or indirectly, by the same interests which owned or controlled the business of the employer in question, the administrator shall be guided by the terms of partnership

agreements, trust indentures, corporate stock records, contracts and such other evidences of ownership or control as are necessary for a determination of the facts. Each employer contracting with or having under him any contractor or subcontractor who is not subject to the provisions of the act shall keep records of the amounts of the wages paid to the individual employees of such contractor or subcontractor and shall pay contributions with respect to such wages. Such contractors and subcontractors shall make the necessary information available to the employer. An owner of premises shall be considered to be an employer if he engages one or more contractors or subcontractors.

Sec. 31-222-7. Payment of contributions

Payment shall be due the last day of the month next following the close of each calendar quarter. Each such contribution payment shall be accompanied by a properly executed employers contribution return. When such contribution date falls on a Sunday or a legal holiday, the contribution payment shall be payable not later than the next following business day. Payment by mail shall be deemed to have been made on the earliest postmark date appearing on the envelope. Whenever an employer fails to pay his contribution within fifteen days after the due date of such contribution, he shall, at the option of the administrator, immediately become liable for all succeeding contributions on a monthly basis. Each such contribution payment shall be payable on or before the last day of each calendar month with respect to wages paid during the preceding calendar month. An employer who has paid six consecutive monthly contributions without delinquency and who is not indebted to the administrator for any previous contributions may, with the approval of the administrator, revert to the quarterly contribution method.

(See G.S. § 31-225.)

Sec. 31-222-8. Employer records of employees

All employers whether or not subject to the act shall keep records, and furnish copies on request, for each employee in such manner that dates of commencement and termination of employment, payroll periods and wages paid or payable for each payroll period are readily ascertainable and so that it will be possible from an inspection thereof to determine: (1) Wages earned by calendar weeks; (2) time lost through lack of work; (3) number of hours worked each calendar week; (4) normal full-time hours of work. Such records shall be available for inspection in Connecticut at all times by duly certified representatives of the administrator. (See section 31-222-6 with respect to employees of certain contractors and subcontractors.) Each employer subject to the unemployment compensation act shall submit quarterly on forms supplied by the administrator (Forms Conn. UC-5A and UC-5B) a listing of wage information, including thereon each employee receiving wages in employment subject to said act. Such wage information shall include the name of each employee, his social security account number and the amount of wages paid to him during such calendar quarter. Such return shall be due not later than the last day of the month following the close of each calendar quarter.

Sec. 31-222-9. Unemployment notices and employee information packet, low earnings reports and lack of work verification form

All employers, whether or not subject to the act, shall submit the following reports, forms, notices and information packets, in such medium as is authorized by the administrator, at the times and under the conditions specified:

(1) **An unemployment notice and employee information packet.** This notice shall be prepared on forms made up or approved by the administrator and shall contain the information required by such forms. The notice shall be attached to an employee information packet, which provides information regarding how to file for unemployment benefits and available reemployment assistance. The administrator shall provide such employee information packets, upon request, to the employer. The unemployment notice shall be completed by the employer and issued to the employee, along with the employee information packet, immediately upon layoff or separation from employment, whatever the cause of such layoff or separation, including a voluntary leaving. This notice shall not be used or required for any purpose other than the filing of a claim for unemployment compensation benefits by the employee. When the administrator determines that, based on the information contained on this notice, or information provided by the individual or the employer, that an issue exists which may affect the individual's eligibility, including but not limited to the separation being due to reasons other than a lack of work layoff, the administrator shall promptly schedule a predetermination hearing pursuant to the provisions of section 31-244-3a of the Regulations of Connecticut State Agencies.

(2) **Employee low earnings report**.

(A) The administrator may require an employer to complete this report with respect to an individual filing a claim for partial unemployment benefits pursuant to section 31-229 of the Connecticut General Statutes. The employer shall complete and submit the report in the manner and within the time period prescribed by the administrator. Information required on the report shall include, but not be limited to: the earnings for such individual for the calendar week in question, the cause of the reduced earnings, the name and the Connecticut registration number of the employer and the signature (individual or facsimile) of the authority supplying the information.

(B) Nothing in this section shall preclude the administrator, upon his own discretion, from entering into an agreement with an employer which would allow an employer to submit to the administrator, in a manner prescribed by the administrator, information concerning an individual's partial earnings for the calendar week or weeks in question and specifying the cause for the reduced earnings. The administrator shall utilize this procedure to enable the employer to establish a claim or to file continued claims for partial benefits on behalf of the individual.

(3) **Lack of work separation verification form**.

(A) The administrator shall promptly transmit this form to the employer in any case where the administrator determines it is necessary to verify that a lack of work separation has occurred, including any case where the individual alleging lack of work acknowledges that

he was not given an unemployment notice and information packet by his employer upon separation. Further, the administrator shall promptly transmit this form to the employer in all cases where the claimant has indicated that he was laid off for lack of work from employment which commenced after the claimant's base period.

(B) The administrator shall transmit the form to the employer's address that appears on the unemployment notice (Form UC-61). Where no Unemployment Notice is provided to the administrator, the administrator shall transmit the form to the most recent address of record provided by the employer to the administrator's Employer Status unit.

(C) The form shall advise the employer of the following:

(i) that the individual claiming benefits stated his separation was due to a reason which constituted a lack of work layoff;

(ii) that no action is required by the employer if the employer agrees with the individual's statement;

(iii) that the employer must respond within seven calendar days of the date the form was transmitted if the employer disagrees with the individual's characterization of the separation;

(iv) the manner in which the employer must respond if it disagrees with the individual's characterization of the separation; and

(v) the consequences for the employer's failure to timely respond, as described in subdivisions (E) and (F) of this subsection.

(D) If the employer disagrees with the individual's characterization of the separation as a lack of work layoff, it shall provide the administrator with the information requested on the form by responding to the administrator in the manner prescribed on the form.

(E) The employer's response shall be received by the administrator within the time limit prescribed on the form. If the employer fails to respond to the administrator with the required information within seven (7) calendar days, benefits may be paid based upon the information provided by the individual.

(F) If the employer fails to respond to the administrator with the required information within seven calendar days and prior to first payment of benefits, the administrator shall treat the separation as a lack of work and find that the employer has waived its right to a first level predetermination hearing and has failed to participate in such hearing for the purposes of section 31-241 of the Connecticut General Statutes.

(G) If the employer responds to the administrator in the prescribed manner within seven calendar days and advises the administrator that the separation was for a reason which does not constitute a lack of work layoff, the administrator shall promptly schedule a predetermination hearing pursuant to the provisions of section 31-244-3a of the Regulations of Connecticut State Agencies.

(H) Nothing in this section shall preclude the administrator, based on his own judgment, from scheduling a predetermination hearing with respect to any claim, based upon the specific circumstances of the claim.

(4) Repealed.

(5) **Vacation shutdown claim.** The administrator may require an employer to complete

and submit this form, in a manner prescribed by the administrator, in order to establish a claim on behalf of an individual unemployed for a period of six weeks or less as a result of an employer's temporary shutdown or mass layoff.

(Effective April 19, 1977; Amended September 17, 2001)

Sec. 31-222-10. Notice to employees of employer's registration with unemployment compensation division

Each subject employer shall notify his employees that he is registered with the Connecticut unemployment compensation division and is paying contributions to the unemployment compensation fund. This information shall be given to the employees by posting a sufficient number of notices, provided by the administrator, in a convenient place on the employer's premises where they may be read by all employees. Copies of this regulation and poster notices, form UC-8, will be furnished to subject employers by the unemployment compensation division at the time of registration or upon request.

Sec. 31-222-11. Interest on past due contributions

When an employer subject to the federal unemployment tax act for any year becomes subject to the act as of the beginning of the calendar year in accordance with the provisions of section 31-223(a) (1) of the general statutes, the administrator shall waive the interest on all contributions payable with respect to wages paid for calendar quarters prior to the calendar quarter during which such twentieth week was completed, provided all such contributions shall be due and payable on or before the next regular contribution return date. If such contributions are not paid by the next regular contribution return date, they shall thereafter be subject to the interest provided by the act until paid. In like manner, the administrator shall waive the interest when an employer has accepted voluntarily the provisions of the act on all contributions payable with respect to wages paid for calendar quarters prior to the date of signing such voluntary acceptance. In the case of an employer who is found by the administrator to be delinquent because he is in good faith was not aware of the fact that he was subject to the act, the administrator shall waive the interest which accrued during the first five calendar quarters that he was so subject. A registered employer is considered to be aware that he is subject to the act after he has been officially notified in writing by the administrator of his liability. Interest will not be waived for any quarterly period after notification of liability even though such period is within the first five quarters after the employer became subject. If an employer has erroneously paid to some other state or to the federal government contributions later determined to be due to the state of Connecticut, no interest shall be charged on such delinquent contributions from the due date to the date of the discovery of the error and until after the end of the month next succeeding such discovery.

Sec. 31-222-12. Workers to secure social security account numbers (Repealed)

Repealed June 11, 2014.

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-222-13. Benefit claim procedure

(a) **Definitions.** For purposes of this section, the following definitions shall apply:

(1) "Good faith error" means the excusable failure of an individual to file a claim, either initial or continuing, in the manner prescribed by the administrator, due to the individual's own negligence, provided there is (a) no prior history of late filing due to such error, (b) the claim is not excessively late, and (c) there is no prejudice to any adverse party.

(2) "Invalidation" means (a) the withdrawal of an otherwise valid initiating claim within twenty-one days from the date on which the monetary determination is issued, (b) the exercising by the administrator of his discretion to reopen a claim under section 31-243 of the Connecticut General Statutes, or (c) the withdrawal of a valid initiating claim in favor of an initiating claim with a later effective date at any time during the six month period following the issuance of the monetary determination.

(3) "Valid initiating claim" means a claim filed by an unemployed or partially unemployed individual who meets the requirements of subdivisions (1) and (3) of subsection (a) of section 31-235 of the Connecticut General Statutes, provided that, with respect to any week of unemployment or partial unemployment, the individual is not found to be entitled to unemployment compensation under any other state's law or compensation for temporary disability under any workers' compensation law for the same period.

(b) **Where made**. All claims for benefits, unless otherwise directed or authorized, shall be made by telephone to designated Unemployment Insurance Call Centers. The telephone numbers for the Call Centers and instructions for filing an initial claim for benefits shall be contained in the employee information packet, which will be given to the individual upon separation. Individuals making inquiry regarding claim filing shall be directed to the appropriate Call Center telephone number.

(c) **When made.**

(1) **Initiating claim**. A week of unemployment shall be a calendar week commencing at midnight on Sunday. An initiating claim shall be filed during the week of unemployment with respect to which it is filed and shall be effective as of the commencement of the week within which it is filed, except where, pursuant to the provisions of section 31-229 of the Connecticut General Statutes, an individual's partial earnings in any week exceed his weekly benefit entitlement with respect to such week, the claim shall be effective as of the commencement of the following week. An initiating claim for partial unemployment shall be filed within four weeks from the end of the calendar week in which the individual's hours were reduced to less than full time and shall be effective as of the commencement of the week of the individual's partial unemployment.

(2) **Continuing claims.** A continuing claim for benefits shall be filed in such manner as prescribed in subsection (d) of this section. A continuing claim for partial benefits shall be

filed in the same manner as a claim for total unemployment, except that it shall include the statement of earnings provided for under section 31-222-9 of the Regulations of Connecticut State Agencies.

(3) **Vacation shutdown claim.** An initiating claim and up to six weeks of continuing claims may be filed where an individual has been laid off due to lack of work for six weeks or less, including during the employer's designated vacation shutdown period, by using the form prescribed under subsection (4) of section 31-222-9 of the Regulations of Connecticut State Agencies, provided the individual has a definite date to return to work within the six week period.

(4) **Failure to file claim within time limit**. Failure to file a claim for benefits, either initial or continuing, within the time limits set forth in this section and in the manner prescribed in subsection (d) of this section, may be found to be for good cause if the administrator determines that a person exercising reasonable prudence in the same circumstances would have been prevented from timely filing. Reasons constituting good cause for failure to timely file a claim include, but are not limited to: (A) failure of the employment security division to discharge its responsibilities, (B) failure of the employer to comply with verification or other requirements relating to unemployment, including failure to issue the unemployment notice and employee information packet, (C) coercion or intimidation which prevented the prompt filing of a claim, or (D) good faith error, provided the individual acted with due diligence in the filing of the claim once he was appropriately notified of his rights to benefits or once the reason which provided good cause for his failure to file ceased to exist.

(5) **Invalidation of initiating claim.** Upon the individual's request, subject to the provisions of sections 31-241 and 31-243 of the Connecticut General Statues, the administrator may invalidate a valid initiating claim provided the individual has first repaid in full any amount of benefits which the individual will be overpaid as a result of the invalidation unless the overpaid benefits can immediately be recouped in full from subsequent payable benefits. Overpayments resulting from an individual's request for invalidation of a valid initiating claim shall not be deemed to have occurred through error and shall not, therefore, be subject to the provisions of section 31-273(a) of the Connecticut General Statutes.

(d) **How made**.

(1) **Initiating claim – by telephone**

The individual shall call one of the designated Call Center telephone numbers obtained from the employee information packet during days and hours designated by the administrator and, once connected to the Interactive Voice Response (IVR) System, will be prompted to enter his social security number and establish a personal identification number (PIN). The individual's Social Security Number and PIN shall be the individual's legal identifiers and must be established. The IVR will then present the individual with a series of questions. Upon completion of the IVR questions, or at a time designated by the IVR system, the individual shall be transferred to an agency representative located in the Call

Center, who will complete the claims taking process. The claim is considered filed when a Call Center representative informs the individual that the claim is completed and has been accepted. If the individual fails to complete the claim within seven days of its initiation, the claim must be reinstated and the effective date of the claim will change to the Sunday of the week in which the claim is completed.

(2) **Initiating claim – in person**

When so directed or authorized by the administrator, an initial claim may be filed in person at a Department of Labor local office most easily accessible to the individual's residence. The administrator may direct or authorize an individual to file in person when the administrator determines that it would be administratively more efficient, considering such factors as language barriers, lack of access to a telephone, the complexity of the claim, or the individual's mental or physical disability or inability to complete a claim using the telephone system.

(3) **Initiating claim - shutdown**

When an individual is laid off due to lack of work for six weeks or less, including during the employer's vacation shutdown period, and has been given a definite return-to-work date within the six-week period, the employer shall provide the individual with a vacation shutdown claim form (form UC-62V). The claim shall be filed by transmitting the form UC-62V to the address designated by the administrator, unless otherwise instructed. When a new claim is filed using the vacation shutdown claim form (form UC-62V), the individual shall not be required to file weekly continuing claims.

(4) **Continuing claim – by telephone**

All continuing claims for benefits, unless otherwise directed, shall be made by telephone on a weekly basis to designated Unemployment Insurance Call Center telephone numbers. The individual shall telephone the designated phone number on a weekly basis on such days and during such hours as designated by the administrator to file for the week. The individual shall access the Interactive Voice Response (IVR) System by entering his social security number and personal identification number (PIN). The administrator shall treat the PIN in the same manner as the individual's signature. By entering the social security number and PIN, the individual certifies that he is answering the questions truthfully and understands that giving false information or answering questions for anyone other than himself constitutes fraud and is subject to penalties prescribed by law. The individual shall be guided through a series of questions regarding eligibility for the seven-day calendar week with respect to which his claim is being filed.

(5) **Continuing partial claim – by telephone**

When filing partial continuing claims, the individual shall enter the name and address of the employer, hours and minutes worked and wages earned for the week claimed. Wages earned for any work performed must be reported as part of the filing of the claim for the week in which the wages were earned, not with respect to the week in which the wages were paid, if such week is not the claim week.

(6) **Return to work**

Upon returning to employment, the individual shall contact the call center to provide the following information: the date on which the individual returned to work, the name and address of the individual's new employer and whether or not the work is self-employment.

(7) **Shared work claims**

Any initial or continuing claim for shared work benefits, pursuant to sections 31-250-8 through 31-250-12, inclusive, of the Regulations of Connecticut State Agencies, may be filed by an employer on behalf of its employees in such manner and medium as directed by the administrator.

(Amended September 17, 2001)

Sec. 31-222-14. Joint accounts; merger of experience; contribution rates

(a) Any employer not previously subject to the act, who becomes subject by reason of acquiring substantially all of the assets, organization, trade or business of a covered employer, may, after written application on a form provided by the administrator and upon approval by the administrator, succeed to the experience of the predecessor employer. Such written application shall be submitted by the employer within ten days following the date of the administrator's notice to him advising him of his liability under the law, and such written notice shall be accompanied by a written statement signed by the predecessor employer, waiving the predecessor's rights to his experience and tax credit in favor of the successor. Transfer of the experience and any unliquidated balance of tax credit of the predecessor employer will be effective as of the date of acquisition of the business. The administrator upon good cause may extend the time for application.

(b) Any employer not previously subject to the act, who becomes subject by reason of acquiring substantially all of the assets, organization, trade or business of two or more covered employers who enjoyed different merit rates, may, after written application on a form provided by the administrator and upon approval by the administrator, succeed to the experience of the predecessor employers. The successor employer will be granted a composite merit rate for the remainder of the calendar year in which acquisition of the business takes place. The composite rate shall be the quotient obtained by dividing the sum of the total estimated contributions of each of the predecessor employers for the whole of the calendar year in which the acquisition takes place by the sum of the payroll of each of the predecessor employers for the preceding calendar year. Merger of experience will be allowed as of June thirtieth of the year in which the acquisition takes place.

(c) If an employer who is subject to the act acquires substantially all of the assets, organization, trade or business of a covered employer, merger of the experience may be allowed, upon written application to the administrator, on a form provided by the administrator as of June thirtieth of the year in which the acquisition takes place. The first contribution rate based upon the joint experience will become effective for the calendar year following such June thirtieth.

(d) An employer who acquires a portion of but less than substantially all of the assets, organization, trade or business of a covered employer, which portion had been operated as

a segregated unit, may apply for a joint account with and succeed to the experience of the transferring employer with respect to such segregated unit. Such application, on a form provided by the administrator, shall be accompanied by a written statement signed by the transferring employer, waiving his rights to the experience with respect to such unit in favor of the acquiring employer. If such employer was not previously subject to the act and because of such acquisition becomes immediately liable, he shall pay contributions at the same reduced rate as the transferring employer from the date of the acquisition to the end of the calendar year, if the segregated unit has been in operation during the whole of the preceding experience period ending on June thirtieth with respect to which the rate currently in effect at the time of the acquisition was established; otherwise he shall pay at the full rate of two and seven-tenths per cent. A segregated unit is a unit, by whatever name called, for which the payroll records have been so maintained that the employment experience as is required for merit rating purposes may readily be identified and separated.

(e) The administrator will establish a joint account for two or more active employers as of June thirtieth of any year upon written application of each such employer, provided such applications shall be filed not later than the September thirtieth next succeeding such June thirtieth. The first contribution rate based upon the joint experience will become effective as of January first following such June thirtieth. Dissolution of joint accounts will be allowed only as of June thirtieth next succeeding the application therefor by the member employers, and the first contribution rates based upon the separate experiences shall be effective as of January first next following such June thirtieth. When joint accounts are established by the administrator, the employers concerned shall continue to submit individually such reports and contributions as are required of employers with individual merit rating accounts. When two or more employers have a joint merit rating account, the merit rating index computation for such account shall include only the experience of those employers in the joint account who have been subject to the provisions of the act for the whole of the preceding experience period. The merit rating index computed for the joint account and the employer's contribution rate, based upon such computation, shall apply only to the employers in the joint merit rating account who have been subject to the provisions of the act for the whole of the preceding experience period.

Sec. 31-222-15. Non-working spouse as dependent

An individuals non-working spouse, for the purposes of section 31-234 of the 1969 supplement to the general statutes, means a lawful husband or wife who, at the beginning of the individual's benefit year, was living in the same household as the individual and who has not been gainfully employed for hire at any time during the three-month period preceding the beginning of the benefit year, or who has a mental or physical disability that is expected to continue for a long or indefinite time or who is pregnant.

(Effective October 31, 1967)

Sec. 31-222-16. Pregnancy (Repealed)

Repealed June 11, 2014.

(Effective October 31, 1967; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-222-17. Disqualification period for voluntary quits, discharges, and suspensions (Repealed)

Repealed June 11, 2014.

(Effective November 14, 1973; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Agency

Department of Labor

Subject

Foreign Contractors Required to File Bond with the Administrator, Unemployment Compensation Prior to Construction Activity in this State

Section

§ 31-225(i)-1

CONTENTS

Foreign Contractors Required to File Bond with the Administrator, Unemployment Compensation Prior to Construction Activity in this State

Sec. 31-225(i)-1. Payment bond from foreign contractors

Any employer, individual, organization, partnership, corporation or other legal entity who engages, in any manner, in contract construction activities in this state and who has its base of operations and is incorporated in another state, shall furnish to the administrator before beginning any such construction activity, a bond with a surety or sureties satisfactory to the administrator in an amount equal to three percent (3%) of the total amount of the contract work to be performed in Connecticut. The minimum amount of such bond or surety shall be ($100.00) one hundred dollars.

(Effective January 9, 1981)

Agency
Department of Labor

Subject
Voluntary Withholding of Income Tax

Section
§ 31-227-1

CONTENTS

Voluntary Withholding of Income Tax

Sec. 31-227-1. Voluntary withholding of income tax

(a) For the purposes of this section, the following definitions shall apply:

(1) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(2) "Benefit year" means the period commencing with the beginning of the week with respect to which an individual has filed a valid initiating claim and continuing through the Saturday of the fifty-first week following the week in which it commenced, provided no benefit year shall end until after the end of the third complete calendar quarter, plus the remainder of any uncompleted calendar week which began in such quarter, following the calendar quarter in which it commenced.

(3) "New claim" means a valid initiating claim for unemployment compensation filed in accordance with Section 31-240 of the General Statutes.

(4) "Time of filing" means the period of time immediately following receipt of the new claim during which the new claim is being processed by the Administrator.

(5) "Unemployment compensation" means any compensation payable under Chapter 567 of the General Statutes, including amounts payable by the Administrator pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(6) "Weekly unemployment compensation payment" means the amount of unemployment compensation payable to an individual with respect to a given week of unemployment.

(b) **Advisement.** The Administrator shall advise each individual filing a new claim for unemployment compensation of the following information at the time of filing:

(1) Unemployment compensation is subject to federal, state and local income tax.

(2) Estimated tax payments may be required based on the annual income and specific circumstances of the individual filing the new claim.

(3) Information regarding whether estimated tax payments are required is available through certain publications of the Department of Revenue Services and the Internal Revenue Service.

(4) The individual may elect to have federal income tax deducted and withheld from his weekly unemployment compensation payment at the amount specified in the federal Internal Revenue Code.

(5) The individual may elect to have state income tax deducted and withheld from his weekly unemployment compensation payment at the rate of three (3) percent.

(6) Any individual who elects to have either federal or state income tax withheld from his weekly unemployment compensation payment pursuant to subdivision (4) or (5) of this subsection shall have both federal and state income taxes withheld concurrently.

(7) Once an individual elects to have state and federal income tax withheld from his weekly unemployment compensation payment, he may elect to discontinue his withholding

status only one time during the rest of his benefit year.

(c) **Election.** An individual filing a new claim for unemployment compensation may elect to have federal and state income tax withheld from his weekly unemployment compensation payment. Such election shall be in writing and signed by the individual.

(d) **Withholding.** The Administrator shall only deduct and withhold federal and state income tax from a weekly unemployment compensation payment after the Administrator is in receipt of a written election, as described in subsection (c) of this section.

(e) **Amount Withheld; Rounding.** The Administrator shall deduct and withhold federal income tax at the amount specified in the federal Internal Revenue Code, and shall deduct and withhold state income tax at the rate of three (3) percent. In calculating the dollar amount of such deduction, the Administrator shall round the amount deducted to the nearest whole dollar by:

(1) Dropping amounts under fifty (50) cents to the next lower dollar, and

(2) Increasing amounts from fifty (50) to ninety-nine (99) cents to the next higher dollar.

(f) **Discontinuance of Withholding Status.** The Administrator shall permit an individual who has previously elected to have federal and state income tax withheld to discontinue such withholding one time during the rest of his benefit year. A request to discontinue withholding shall be in writing and signed by the individual. The Administrator shall only discontinue withholding after a signed request to discontinue is received.

(g) **Order of Withholding.**Amounts shall be deducted and withheld from an individual's weekly unemployment compensation payment in the following order:

(1) Deductions and withholding to offset unemployment compensation overpayments pursuant to Section 31-273 of the General Statutes;

(2) Deductions for any child support obligations being withheld pursuant to Section 31-227(h) of the General Statutes;

(3) Any other amounts required to be deducted and withheld under Chapter 567 of the General Statutes;

(4) Amounts deducted and withheld for federal income tax pursuant to this section;

(5) Amounts deducted and withheld for state income tax pursuant to this section.

(h) **Limitation**. Where withholding pursuant to subdivisions (1), (2) and (3) of subsection (g) of this section results in an amount which is less than the amount of federal and state tax to be withheld pursuant to subsection (e) of this section, such income tax deduction and withholding shall be limited to the extent funds are available.

(Adopted effective June 2, 1997)

Agency
Department of Labor

Subject
Alternate Base Period

Inclusive Sections
§§ 31-230-1—31-230-4

CONTENTS

Alternate Base Period

Sec. 31-230-1. Definitions

As used in sections 31-230-1 to 31-230-4, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(2) "Alternate base period" means the four most recently completed calendar quarters prior to the individual's benefit year, provided such quarters were not previously used to establish a prior valid benefit year, except that for any such individual who is eligible to receive or is receiving workers' compensation or who is properly absent from work under the terms of an employer's sick leave or disability leave policy, the base period shall be the four most recently worked calendar quarters prior to such benefit year, provided such quarters were not previously used to establish a prior valid benefit year and, provided further, the last most recently worked calendar quarter is not more than twelve calendar quarters prior to the date such individual makes the initiating claim.

(3) "Benefits" means unemployment compensation payable to an individual with respect to his unemployment under Chapter 567 of the Connecticut General Statutes.

(4) "Benefit year" means the period commencing with the beginning of the week with respect to which an individual has filed a valid initiating claim and continuing through the Saturday of the fifty-first week following the week in which it commenced, provided no benefit year shall end until after the end of the third complete calendar quarter, plus the remainder of any uncompleted calendar week which began in such quarter, following the calendar quarter in which it commenced.

(5) "Regular base period" means the first four of the five most recently completed calendar quarters prior to an individual's benefit year, provided such quarters were not previously used to establish a prior valid benefit year, except that for any individual who is eligible to receive or is receiving or had received workers' compensation, or who is or had been properly absent from work under the terms of his employer's sick leave or disability leave policy, the base period shall be the first four of the five most recently worked quarters prior to such benefit year, provided such quarters were not previously used to establish a prior valid benefit year and, provided further, the last most recently worked calendar quarter is not more than twelve calendar quarters prior to the date such individual makes his initiating claim.

(Adopted effective September 30, 2003)

Sec. 31-230-2. Alternate base period determinations

(a) When the Administrator determines that an individual is ineligible for benefits using his regular base period, the Administrator shall determine whether the individual is eligible for benefits using an alternate base period. The Administrator shall not require the individual to initiate a request for a determination of eligibility using an alternate base period in such

cases.

(b) The Administrator shall ascertain from any individual who is ineligible for benefits using his regular base period whether he was paid wages during the most recent completed calendar quarter in his alternate base period.

(c) Where wages paid to the individual during the most recent completed calendar quarter have already been reported by an employer to the Administrator and can be identified on the Administrator's automated wage files, the Administrator shall promptly issue a written determination of eligibility or ineligibility for benefits using the individual's alternate base period.

(d) Where wages paid to the individual during the most recent completed calendar quarter cannot be identified on the Administrator's automated wage files, the Administrator shall institute an investigation and contact the employer or the employer's agent directly to secure the requested wage information. The Administrator shall exercise such administrative and investigative powers as are authorized under Chapter 567 of the Connecticut General Statutes and are necessary to accurately establish the correct amount of wages paid to the individual during the subject quarter.

(e) Once all wages paid to the individual during the most recent completed calendar quarter have been established pursuant to subsection (d) of this section, the Administrator shall promptly issue a written determination of eligibility or ineligibility for benefits using the individual's alternate base period.

(f) Any determination issued pursuant to this section shall specify:

(1) the individual's benefit year;

(2) the individual's alternate base period;

(3) wages paid to the individual during his alternate base period;

(4) employers who paid such wages during the individual's alternate base period;

(5) the individual's total unemployment benefit rate pursuant to section 31-231a of the Connecticut General Statutes;

(6) the individual's maximum limitation on total benefits pursuant to section 31-231b of the Connecticut General Statutes;

(7) the individual's dependency allowance, if any, pursuant to section 31-234 of the Connecticut General Statutes; and

(8) the individual's appeal rights.

(g) Any determination issued pursuant to this section may be appealed to the Employment Security Appeals Division within the time limits and under the conditions prescribed in section 31-241 of the Connecticut General Statutes.

(Adopted effective September 30, 2003)

Sec. 31-230-3. Notice of alternate base period program

(a) Any determination issued under section 31-230-2 of the Regulations of Connecticut State Agencies shall clearly inform the individual that eligibility or ineligibility was determined using an alternate base period.

(b) The Administrator shall inform any individual when his determination of eligibility using an alternate base period is being delayed pending establishment of wages in the most recent calendar quarter.

(c) The Administrator shall provide information, which explains that individuals who are ineligible for benefits using a regular base period may be eligible using an alternate base period, in those publications and other media which the Administrator customarily uses to communicate information about the unemployment compensation program to claimants, employers and the general public.

(Adopted effective September 30, 2003)

Sec. 31-230-4. Effective dates

(Adopted effective September 30, 2003)

Agency

Department of Labor

Subject

Compensation Weekly Benefit Rate for Construction Workers

Inclusive Sections

§§ 31-231a-1—31-231a-4

CONTENTS

Compensation Weekly Benefit Rate for Construction Workers

Sec. 31-231a-1. Definitions

As used in sections 31-231a-1 to 31-231a-4, inclusive, the following definitions apply:

(1) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(2) "Benefits" means unemployment compensation payable to an individual with respect to his unemployment under Chapter 567 of the Connecticut General Statutes.

(3) "Classification Code" means a code contained in the Classification Codes and Statistical Codes Manual published by the National Council on Compensation Insurance, Incorporated (NCCI).

(4) "Construction Worker" means any individual whose classification code is contained in Schedule 26 or Schedule 27 of the Classification Codes and Statistical Codes Manual published by the National Council on Compensation Insurance, Incorporated (NCCI) generally utilized for workers' compensation and employer liability insurance purposes.

(5) "Employer" means the employer for whom the individual most recently worked prior to establishing a benefit year which commenced on or after April 1, 1996.

(Adopted effective October 23, 1996)

Sec. 31-231a-2. Total unemployment benefit rate calculation for a construction worker

For a construction worker, the total unemployment benefit rate for the individual's benefit year commencing on or after April 1, 1996 shall be an amount equal to one twenty-sixth, rounded to the next lower dollar, of the total wages paid during that quarter of the current benefit year's base period in which wages were the highest, but not less than fifteen dollars nor more than the maximum benefit rate as provided in subsection (b) of Section 31-231a of the general statutes.

(Adopted effective October 23, 1996)

Sec. 31-231a-3. Identification of construction workers

(a) Pursuant to the provisions of Connecticut Agencies Regulations Section 31-222-9(1), the information provided by an employer on an unemployment notice given to a construction worker must contain the individual's classification code to which the majority of hours worked were charged in the most recent pay period preceding the issuance of such notice.

(b) In cases where the employer fails to provide the individual's classification code, and the individual indicates that he is a construction worker, the Administrator may take any action he deems necessary and appropriate to obtain the classification code from the employer. This may include appropriate reliance upon the Administrator's records which indicate the individual's prior classification code assigned when the individual initiated a previous benefit year.

(c) In cases where the employer fails to provide the individual's classification code the Administrator shall obtain sufficient information from the individual on which to conclude whether the individual is a construction worker. Where the Administrator determines that an individual is a construction worker, he shall assign to the individual that classification code which he is best able to ascertain is the correct code.

(d) In determining whether an individual is or is not a construction worker under this section, the Administrator shall consider the individual's most recent employment prior to establishing a benefit year.

(1) However, the Administrator may disregard any non-construction worker employment where such employment relationship:

(A) existed for thirty or less calendar days following the individual's separation from employment as a construction worker; or

(B) was intended to be temporary in nature, and provided the individual was a construction worker subsequent to the beginning of his base period.

(2) In addition, the administrator may disregard any construction worker employment where such employment relationship:

(A) existed for thirty or less calendar days following the individual's separation from non-construction worker employment; or

(B) was intended to be temporary in nature, and provided the individual was engaged in non-construction worker employment subsequent to the beginning of his base period.

(Adopted effective October 23, 1996; Amended March 5, 1998)

Sec. 31-231a-4. Notice of determination

The determination that an individual's weekly benefit rate is based upon his classification as a construction worker shall be contained on the Monetary Determination (Form UC-58) issued by the Administrator as a result of such classification. The Administrator may invoke his continuing jurisdiction under C.G.S. Section 31-243 in order to reconsider an individual's classification as a construction worker.

(Adopted effective October 23, 1996)

Agency
Department of Labor

Subject
Eligibility for Unemployment Compensation

Inclusive Sections
§§ 31-235-1—31-235-27

CONTENTS

Agency
Department of Labor

Subject
Eligibility for Unemployment Compensation

Inclusive Sections
§§ 31-235-1—31-235-27

CONTENTS

Eligibility for Unemployment Compensation

Sec. 31-235-1. Definitions

For purposes of sections 31-235-1 through 31-235-26 and sections 31-236-1 to 31-236-57 inclusive of these regulations, the following definitions apply:

(a) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(b) "Base period" means the first four of the five most recently completed calendar quarters prior to an individual's benefit year, provided such quarters were not previously used to establish a prior valid benefit year, except that for any individual who is eligible to receive or is receiving or had received workers' compensation, or who is or had been properly absent from work under the terms of his employer's sick leave or disability leave policy, the base period shall be the first four of the five most recently worked quarters prior to such benefit year, provided, such quarters were not previously used to establish a prior valid benefit year and provided further, the last most recently worked calendar quarter is not more than twelve calendar quarters prior to the date such individual makes his initiating claim.

(c) "Benefits" means unemployment compensation payable to an individual with respect to his unemployment under Chapter 567 of the Connecticut General Statutes.

(d) "Benefit year" means the period commencing with the beginning of the week with respect to which an individual has filed a valid initiating claim and continuing through the Saturday of the fifty-first week following the week in which it commenced, provided no benefit year shall end until after the end of the third complete calendar quarter, plus the remainder of any uncompleted calendar week which began in such quarter, following the calendar quarter in which it commenced.

(e) "Full-time work" means employment for the number of hours which prevails for the industry or employment sector in which the work is performed.

(f) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of respective interests of employer and employee.

(g) "Major portion of the week" means three or more of those days of the week during which the work for which an individual is suited is customarily performed to a significant extent.

(h) "Prevailing wages, hours or conditions" means those wages paid, or hours or conditions which exist for the largest number of workers engaged in similar work in the area.

(i) "Public employment bureau" means the Connecticut State Job Service, or where an individual is filing for benefits on an interstate basis, the public employment bureau in the appropriate jurisdiction.

(j) "Week" means a calendar week commencing at midnight on Sunday.

(k) "Wilful" means intentional or deliberate or with reckless indifference for the probable consequences of one's actions.

(Effective June 24, 1986)

Sec. 31-235-2. Benefit eligibility conditions

Except as provided in section 31-235-3 of the Regulations of Connecticut State Agencies, an unemployed individual shall be eligible to receive benefits with respect to any week only if the Administrator finds that:

(1) the individual has made claim for benefits in accordance with the provisions of section 31-240 of the Connecticut General Statutes and has registered for work at the public employment bureau or other agency designated by the Administrator within such time limits, with such frequency and in such manner as prescribed by the Administrator in section 31-222-13 of the Regulations of Connecticut State Agencies, provided failure to comply with this condition may be excused by the Administrator upon a showing of good cause, as defined in section 31-222-13 of the Regulations of Connecticut State Agencies, therefor; and

(2) Notwithstanding sections 31-235-6a and 31-235-20 of the Regulations of Connecticut State Agencies, the individual is physically and mentally able to work and is available for work and has been and is making reasonable efforts to obtain work; and

(3) the individual has been paid wages by an employer who was subject to the provisions of Chapter 567 of the Connecticut General Statutes during the base period of the individual's current benefit year in an amount at least equal to forty times the individual's benefit rate for total unemployment.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-3. Benefit eligibility conditions—involuntary retirees 62 years and older

An unemployed individual who is sixty-two years of age or older and is involuntarily retired under a compulsory retirement policy or contract provision shall be eligible for benefits with respect to any week only if the Administrator finds that:

(1) the individual has made claim for benefits in accordance with the provisions of section 31-240 and has registered for work at the public employment bureau; and

(2) except as provided in section 31-235-20, the individual is physically and mentally able to work and is available for work; and

(3) the individual has been paid wages by an employer who was subject to the provisions of chapter 567 of the Connecticut General Statutes during the base period of his current benefit year in an amount at least equal to forty times his benefit rate for total unemployment; and

(4) the individual has not refused suitable work to which he has been referred by the Administrator.

(Effective June 24, 1986)

Sec. 31-235-4. Physically and mentally able to work

The Administrator shall find that an individual is physically and mentally able to work so long as the individual is capable of performing some type of remunerative work. Except as provided in sections 31-235-6a and 31-235-12 of the Regulations of Connecticut State Agencies, the Administrator shall find that an individual is able to work with respect to a given week if the individual is physically and mentally able to work during those days and hours which are lawful and customary for the individual's usual occupation or industry or other suitable work.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-5. Ability to work—pregnancy

The Administrator shall not conclude that any individual is unable to work solely because the individual is pregnant.

(Effective June 24, 1986)

Sec. 31-235-6. Availability – general

(a) Except as provided in section 31-235-6a of the Regulations of Connecticut State Agencies, in order to find an individual eligible for benefits for any week, the Administrator must find the individual available for full-time work during that week. An individual is available for work if the individual is genuinely exposed to the labor market. An individual is genuinely exposed to the labor market if such individual is willing, able and ready to accept suitable work.

(b) The Administrator shall find that a labor market exists for an individual, if within a reasonable geographical area, there are jobs for which such individual possesses skills and abilities. The fact that there are more persons in an area qualified for a certain type of job than there are job vacancies does not negate the existence of a labor market for the individual. Restrictions on the type of work an individual is willing to accept shall only render the individual unavailable for work if the Administrator finds that the restriction reduces such individual's prospects for securing employment to such an extent that the individual is no longer genuinely exposed to the labor market.

(c) The Administrator may deny benefits on the basis of restricted availability if the Administrator has first advised and given the individual the opportunity to comply with the requirements of section 31-235 of the Connecticut General Statutes, except as provided in section 31-235-6a of the Regulations of Connecticut State Agencies.

(d) The Administrator shall afford an individual a reasonable period of time within which to seek employment at such individual's highest skill and wage level. After a reasonable period of time, the Administrator may require the individual to broaden such individual's availability with respect to the type of work and wages the individual is willing to accept.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-6a. Availability—limitations based on physical or mental impairments

(a) **Definitions**:

For the purposes of this section, the following definitions shall apply:

(1) "Chronic" means a persistent or recurring condition that current medical science can alleviate but not cure;

(2) "Licensed physician" means a doctor of medicine or osteopathy possessing a license under Chapter 370 of the Connecticut General Statutes to practice medicine and surgery in this State;

(3) "Long-term" means a condition that has persisted or is likely to persist for at least twelve months;

(4) "Mental impairment" means a clinically recognized condition or illness that affects a person's thought processes, judgment or emotions;

(5) "Part-time employment" means employment of less than thirty-five hours per calendar week;

(6) "Permanent" means a condition that will last during the lifetime of the individual;

(7) "Physical impairment" means a partial or total loss of bodily function, whether congenital or resulting from injury or disease, whether existing alone or in combination with another physical or mental impairment; and

(8) "Suitable work" means either work in the individual's occupation or field or other work for which the individual is reasonably fitted, provided such work is within a reasonable distance of the individual's residence and is consistent with any medical restrictions imposed by the individual's licensed physician. In determining whether or not any work is suitable for an individual, the Administrator shall consider the degree of risk to the individual's health, safety and morals, the individual's physical and mental fitness and prior training and experience, the individual's skills, the individual's previous wage level and the individual's length of unemployment.

(b) The Administrator may find an individual who limits such individual's availability to part-time employment to be eligible for benefits only if the individual:

(1) provides documentation from a licensed physician that:

(A) the individual has a physical or mental impairment that is chronic or is expected to be long-term or permanent in nature, and

(B) the individual is unable to work full-time because of such impairment; and

(2) establishes, to the satisfaction of the Administrator, that such limitation does not effectively remove such individual from the labor force.

(c) (1) In determining eligibility pursuant to subsection (b) of this section, the Administrator shall require the individual applying for benefits to secure documentation from a licensed physician, on a form prescribed by the Administrator, which provides the following information:

(A) whether the individual has a physical or mental impairment;

(B) whether such impairment is:

(i) chronic,

(ii) expected to be long-term, or

(iii) permanent in nature;

(C) whether, in the physician's professional opinion, such impairment will render the individual unable to work full-time hours on a continuing or long-term basis; and

(D) a description of such impairment.

(2) In addition, the Administrator may request that the licensed physician provide the following information:

(A) a description of any restrictions on the type of work the individual is able to perform;

(B) any restrictions on the number of hours per day the individual is able to work; and

(C) any restrictions on the number of hours per week the individual is able to work.

(3) In the absence of the information referenced in subsection (c)(2) of this section, the Administrator may consider any reliable evidence regarding any such restrictions.

(d) **Labor force attachment**.

In determining whether an individual has established that limiting such individual's availability to part-time employment has not effectively removed the individual from the labor force pursuant to subsection (b)(2) of this section, the Administrator shall consider the following:

(1) The individual's availability for suitable work

(A) The Administrator may find that an individual's limitation on availability to part-time employment does not effectively remove the individual from the labor force, provided the individual:

(i) is available for suitable work, as defined in subsection (a)(8) of this section, during the hours that the individual is medically permitted to work; and

(ii) satisfies the applicable requirements of sections 31-235-6 through 31-235-21, inclusive, of the Regulations of Connecticut State Agencies.

(B) In determining an individual's availability for suitable work in accordance with this subdivision, the Administrator shall consider the individual's history of working part-time.

(2) The individual's efforts to find work

The Administrator may find that an individual whose availability is limited to part-time employment is making reasonable efforts to find work if the individual:

(A) directs the individual's work search toward suitable work, as defined in subsection (a)(8) of this section; and

(B) satisfies the requirements of sections 31-235-22 through 31-235-26, inclusive, of the Regulations of Connecticut State Agencies; or

(C) is a registered client of an organization that provides services to individuals in need of supported employment.

(Adopted effective December 7, 2007)

Sec. 31-235-7. Availability – short-term labor market exposure

Where an individual has established that such individual is genuinely exposed to the labor market for a short duration, either because the individual has a reasonably certain date of

recall by the individual's former employer or because the individual has secured new employment to commence in the near future, the individual must be available for temporary full-time employment, or temporary part-time employment, provided the individual has satisfied the requirements of section 31-235-6a of the Regulations of Connecticut State Agencies, in order to be eligible for benefits.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-8. Distance to work transportation

An individual must be available for work within a reasonable distance of his residence. In determining whether an individual is available for work within a reasonable distance, the Administrator shall consider:

(1) availability of public transportation;
(2) personal means of transportation available to the individual;
(3) common commuting paterns for individuals similarly situated;
(4) the individual's physical condition;
(5) the location of job opportunities.

(Effective June 24, 1986)

Sec. 31-235-9. Availability – days

(a) Except as provided in sections 31-235-6a and 31-235-12 of the Regulations of Connecticut State Agencies, an individual must be available for work for those days of the week during which the work for which the individual is suited is customarily performed.

(b) An individual may exclude from the individual's days of availability those days in which such individual's customary occupation or other suitable work is performed only to a minimal extent.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-10. Availability – hours

(a) Except as provided in sections 31-235-6a and 31-235-12 of the Regulations of Connecticut State Agencies, an individual must be available for work during such hours as are lawful and customary for the individual's usual occupation or industry or for other suitable work.

(b) An individual may exclude from such individual's hours of availability those hours in which the individual's customary occupation or other suitable work is performed only to a minimal extent.

(c) An individual may exclude from the individual's hours of availability those hours which such individual can demonstrate pose a health risk, provided that exclusion of such hours does not severely restrict the individual's exposure to the labor market.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-11. Availability during a labor dispute

Where an individual has become unemployed as the result of a labor dispute, the individual must comply with the provisions of sections 31-235-1 to 31-235-26 inclusive.

(Effective June 24, 1986)

Sec. 31-235-12. Availability – major portion of a benefit week

Notwithstanding the provisions of section 31-235-4, section 31-235-9 and section 31-235-10 of the Regulations of Connecticut State Agencies, and except for the provisions of section 31-235-6a of the Regulations of Connecticut State Agencies, the Administrator shall consider an individual to be available for work with respect to a given week if the individual is available for work during the major portion of the week, so long as the individual's restriction on days of availability is not continuing in nature.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-13. Leave of absence

(a) Where an individual has become unemployed as the result of a leave of absence granted by the individual's employer, the individual must comply with the provisions of sections 31-235-1 to 31-235-26 inclusive to be eligible for benefits.

(b) When necessary, the Administrator shall request from the individual's employer any information he needs concerning the leave of absence.

(Effective June 24, 1986)

Sec. 31-235-14. Availability—conscientious objection

An individual's religious or moral objection to a particular type of work shall not render the individual unavailable for work, provided such objection does not severely restrict his exposure to the labor market.

(Effective June 24, 1986)

Sec. 31-235-15. Availability—jury duty

When an unemployed individual is summoned to jury duty, the Administrator shall consider the individual to be available for work during the performance of such duty.

(Effective June 24, 1986)

Sec. 31-235-16. Availability—legislator

No member of the Connecticut General Assembly shall, during the regular session of the General Assembly, be deemed available for work.

(Effective June 24, 1986)

Sec. 31-235-17. Availability status of individuals not legally authorized to work in the United States

The Administrator shall not find any individual, who is not authorized under federal law

to work in the United States, to be available for work.

(Effective June 24, 1986)

Sec. 31-235-18. Availability—workfare

An individual's participation in a state or municipal workfare program shall not, in and of itself, render the individual unavailable for work.

(Effective June 24, 1986)

Sec. 31-235-19. Availability—patterns of unemployment

The Administrator shall not consider an individual's prior patterns of unemployment in determining whether he is available for work. For the purposes of this section, "pattern of unemployment" means regularly recurring periods of unemployment of the claimant in the years prior to his filing the claim in question.

(Effective June 24, 1986)

Sec. 31-235-20. Availability – Student availability

(a) The Administrator shall not consider an individual to be unavailable for work solely because such individual is attending a school, college or university as a regularly enrolled student, provided the individual has not been found ineligible under the provisions of section 31-236(a)(6) of the Connecticut General Statutes. The Administrator shall not consider an individual's efforts to obtain work to be lacking if, as a student, the individual restricts such efforts to full-time employment, or part-time employment provided the individual has satisfied the requirements of section 31-235-6a of the Regulations of Connecticut State Agencies, which does not conflict with the individual's regular class hours as a student.

(b) Notwithstanding the provisions of subsection (a), any individual who is attending a school, college or university as a regularly enrolled full-time student and who has attended a school, college or university as a regularly enrolled full-time student at any time during the two years prior to the individual's date of separation from employment shall be considered by the Administrator to be unavailable for work unless the individual has been employed on a full-time basis for the same two-year period.

(c) For purposes of this section, "school" means an established institution of vocational, academic or technical instruction or education, other than a college or university.

(d) For purposes of this section, "regularly enrolled student" means an individual who has completed all forms and processes required to attend a school, college or university and who will attend prescribed classes at the times they are offered.

(e) For purposes of this section, "regularly enrolled full-time student" means an individual who has registered for sufficient credits to constitute full-time status, as determined by the school, college or university.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-235-21. Availability—union/non-union

To be available for work, an individual must be willing, able and ready to accept suitable work, irrespective of its union or non-union character.

(Effective June 24, 1986)

Sec. 31-235-22. Efforts—general

(a) The Administrator shall require that for each week for which a claim for benefits is made, an individual must make reasonable efforts to obtain work.

(b) The Administrator shall deny benefits to an individual on the basis of the individual's failure to make reasonable efforts to obtain work only if the Administrator has determined the individual to be available for suitable work and the individual's efforts to obtain work in a given week were inadequate in terms of quantity, type of work sought or method of work search utilized.

(c) The Administrator shall not require any individual who is sixty-two years of age or older and who is involuntarily retired under a compulsory retirement policy or contract provision to make reasonable efforts to obtain work.

(d) The Administrator shall not deny benefits on the basis of a failure to make reasonable efforts, unless the Administrator has first advised the individual of the requirements of section 31-235 of the Connecticut General Statutes and given the individual an opportunity to comply.

(Effective June 24, 1986)

Sec. 31-235-23. Efforts—quantity

The Administrator shall find that an individual's efforts to obtain work are inadequate in any week if the individual has not brought his skills and aptitudes to the attention of a sufficient number of employers to effectively enhance his prospects for securing suitable work at the earliest possible date.

(Effective June 24, 1986)

Sec. 31-235-24. Efforts—type of work

The Administrator shall find inadequate an individual's efforts to obtain work for which he is not reasonably suited, given his prior work experience and training.

(Effective June 24, 1986)

Sec. 31-235-25. Efforts—method of work search

The Administrator shall find that an individual's efforts to obtain work in any week are inadequate if the individual's work search method is not likely to bring the availability of his skills and aptitudes to the attention of employers.

(Effective June 24, 1986)

Sec. 31-235-26. Efforts—individuals scheduled to commence or return to work

The Administrator shall not deny benefits on the basis of an individual's failure to make reasonable efforts to obtain work in a given week if the individual is scheduled to commence or return to work on a definite date in the immediate future.

(Effective June 24, 1986)

Sec. 31-235-27. Participation in profiling

(a) For purposes of this section, the following definitions apply:

(1) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(2) "Due diligence" means the actions a reasonable and prudent person would take under similar circumstances.

(3) "Good faith error" means a reason given by an individual identified through the profiling system for failure to participate in a reemployment service, which reason is attributable to an honest mistake that does not rise to the level of gross negligence.

(4) "Participation" in a Reemployment Service" means attendance and a good faith effort to participate in and complete a reemployment service.

(5) "Profiling System" means a system designed by the Administrator to identify unemployment compensation benefit recipients who are likely to exhaust regular benefits and need reemployment services to make a successful transition to new employment.

(6) "Reemployment Service" means a service to which an individual identified through the profiling system has been referred, which is designed to: (a) orientate an individual to the profiling system and assess his need for subsequent services; and/or (b) provide the individual with skills or information to assist him to return to suitable employment.

(b) The Administrator's responsibilities in the operation of a profiling system shall include, but not be limited to, the following:

(1) Identification of individuals through the profiling system who are likely to exhaust unemployment benefits;

(2) Orientation of individuals regarding available profiling system reemployment services and assessment of the need for such services;

(3) Determination of what, if any, profiling system reemployment services are needed to assist the individual to make a successful transition to new employment;

(4) Referral of individuals, when appropriate, to profiling system reemployment services deemed necessary by the Administrator;

(5) Monitoring of an individual's participation in referred reemployment services, where necessary;

(6) Scheduling and conducting a hearing to adjudicate eligibility for unemployment benefits pursuant to Section 31-241 of the General Statutes, whenever the Administrator identifies an issue of compliance with respect to an individual's participation in a reemployment service which requires adjudication; and

(7) Making a determination of eligibility with respect to any issue adjudicated pursuant to subdivision (6) of this subsection.

(c) As a condition of eligibility for unemployment benefits, an individual shall participate in any appropriate, profiling system reemployment service to which he has been referred unless he has completed similar services or he can demonstrate that justifiable cause existed for his nonparticipation.

(d) In considering whether justifiable cause has been shown for the nonparticipation in a profiling system reemployment service, the Administrator shall compare the individual's actions with the standard of what a prudent and reasonable person would do under similar circumstances and consider all relevant factors, including but not limited to:

(1) "Good faith error" by the individual provided there is no prior history of nonparticipation due to such error. In determining whether good faith error existed, the Administrator shall consider an individual's level of familiarity with profiling system procedures and requirements and whether the individual's actions otherwise demonstrate an intent to comply with such procedures and requirements;

(2) Any physical or mental impairment of the individual which may have prevented participation;

(3) Administrative error by the Employment Security Division or the failure of the Division to discharge its responsibilities;

(4) Factors outside the control of the individual which prevented participation;

(5) Participation in a training program approved by the Administrator pursuant to Section 31-236b of the general statutes;

(6) A scheduled interview or appointment with an employer relating to the individual's efforts to obtain suitable employment;

(7) Employment, the hours of which conflict with participation;

(8) Whether the individual acted with due diligence after the reason for nonparticipation no longer existed;

(9) Whether the individual is currently participating in, or will in the immediate future, participate in similar services.

(e) Any profiling system reemployment service which requires attendance for two days or less in any given week shall not be considered training with approval of the Administrator pursuant to Section 31-236b of the General Statutes.

(Adopted effective May 31, 1996)

Agency
Department of Labor

Subject
Eligibility for Unemployment Compensation

Inclusive Sections
§§ 31-236-1—31-236-58

CONTENTS

Eligibility for Unemployment Compensation

Sec. 31-236-1. Refusal of work general

(a) An individual shall be ineligible for benefits if the Administrator finds that the individual failed without sufficient cause either:

(1) to apply for available, suitable work when so directed by the Administrator or by the public employment bureau; or

(2) to accept suitable employment when offered to the individual by the public employment bureau or by an employer.

(b) Ineligibility pursuant to subsection (a) shall continue until the individual has returned to work and earned at least six times the individual's benefit rate.

(c) (1) Suitable work means either work in the individual's occupation or field or other work for which such individual is reasonably fitted, provided such work is within a reasonable distance of the individual's residence. In determining whether or not any work is suitable for an individual, the Administrator shall consider the degree of risk to the individual's health, safety and morals, the individual's physical and mental fitness and prior training and experience, the individual's skills, the individual's previous wage level and the individual's length of unemployment.

(2) Notwithstanding subdivision (1) of this subsection, for an individual who has limited availability to part-time employment while satisfying the eligibility requirements of section 31-235-6a of the Regulations of Connecticut State Agencies, the administrator shall not find work to be suitable unless it is consistent with any medical restrictions imposed by the individual's licensed physician.

(d) The Administrator shall not deem work to be suitable nor deny benefits under Chapter 567 of the Connecticut General Statutes to any otherwise eligible individual for refusing to accept work under any of the following conditions:

(1) The position offered is vacant due directly to a strike, lockout or other dispute;

(2) The wages, hours or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) As a condition of being employed the individual would be required to join a company union or resign or refrain from joining any bona fide labor organization;

(4) The position is for work which commences or ends between the hours of one and six o'clock in the morning if the Administrator finds that such work would constitute a high degree of risk to the health, safety or morals of the individual, or would be beyond the physical or mental capabilities or fitness of the individual or there is no suitable transportation available between the individual's home and the individual's place of employment;

(5) As a condition of being employed the individual would be required to agree not to leave such position if recalled by the individual's former employer.

(Effective June 24, 1986; Amended December 7, 2007)

Sec. 31-236-2. Bona fide offer of work or referral to work

(a) In determining whether an individual refused work, or a referral to work, for sufficient cause, the Administrator must first establish that there was a bona fide offer of work or a definite referral to work. A job referral or offer must be for available work, which means a job actually open to a qualified applicant on the date of the job referral or offer, or for a job available in the near future. Telephone logs or other business records shall be admissible as evidence of a bona fide offer of work or referral to work.

(b) An offer of work can be made only by an employer or his authorized agent or the public employment bureau. A referral to work can be made only by the Administrator or the public employment bureau.

(c) In order to establish that a refusal occurred, the Administrator must determine that the individual knew he was being offered a specific job or a referral to a specific job, and did not accept the specific job or referral.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-3. Suitable work—usual occupation or work for which one is reasonably fitted

(a) Suitable work means either work in an individual's usual occupation or work for which he is reasonably fitted. Usual occupation is work which the individual has performed for an appreciable period of time. Short-term employment performed sporadically or incidentally shall not be considered by the Administrator in determining an individual's usual occupation.

(b) Work for which the individual is reasonably fitted means work which the individual can do or be readily trained to do considering his prior training, education, experience, and skills.

(Effective June 24, 1986)

Sec. 31-236-4. Reasonable distance of offer of work

In determining whether work offered is within a reasonable distance, the Administrator shall consider:

(1) availability of public transportation;

(2) personal means of transportation available to the individual;

(3) common commuting patterns for individuals similarly situated;

(4) the individual's physical condition;

(5) actual distance in miles between the individual's residence at the time of the offer and the place of employment.

(Effective June 24, 1986)

Sec. 31-236-5. Suitable work—degree of risk to health

In determining whether or not work offered is suitable for an individual, the Administrator shall consider the degree of risk to the individual's health. In determining the degree of risk,

the Administrator may consider the individual's state of health, his physical capabilities, the physical and mental requirements of the job, working conditions and the existence of any medical documentation concerning the individual's limitations. Where an unreasonable risk to the individual's health is established, the Administrator shall find the work to be unsuitable for the individual.

(Effective June 24, 1986)

Sec. 31-236-6. Suitable work—degree of risk to safety

In determining whether or not work offered is suitable for an individual, the Administrator shall consider the degree of risk to the individual's safety. Where an unreasonable risk to the individual's safety is established, given his prior training and experience, the Administrator shall find the work to be unsuitable for the individual.

(Effective June 24, 1986)

Sec. 31-236-7. Suitable work—degree of risk to morals

In determining whether or not work offered is suitable for an individual, the Administrator shall consider the degree of risk to the individual's morals. In determining the degree of risk, the Administrator shall consider the individual's moral or religious principles and beliefs, and any conflicting work requirements. Where an unreasonable risk to the individual's morals is established, the Administrator shall find the work to be unsuitable for the individual.

(Effective June 24, 1986)

Sec. 31-236-8. Suitable work—prior training, experience and skills

The Administrator shall consider an individual's prior training, experience, and skills in determining the suitability of work offered. The Administrator shall afford an individual a reasonable period of time within which to obtain employment at his highest wage and skill level. Where an individual has refused an offer or referral to work which is significantly below his highest wage or skill level before such reasonable period of time has lapsed, the Administrator shall find such work to be unsuitable for the individual.

(Effective June 24, 1986)

Sec. 31-236-9. Suitable work—previous wage level

The Administrator shall consider an individual's previous wage level in determining the suitability of work offered. Previous wage level means wages, salary, or benefits most recently received by the individual prior to the establishment of a claim for benefits, except that in establishing a previous wage level, the Administrator may consider other than the most recent earnings where:

(1) the individual's most recent earnings were received for so short a period or under such unusual conditions that the individual cannot reasonably command such earnings regularly; or

(2) the individual's earnings prior to his most recent earnings are higher and indicate that, considering his experience and training, he can command such higher rates at the present time; or

(3) the individual can command higher wages based on education, training or accomplishment; or

(4) the individual cannot obtain employment at his most recent wage level as a result of his incapacity or inability to perform such work, or where the type of employment he most recently performed is no longer in existence.

(Effective June 24, 1986)

Sec. 31-236-10. Suitable work—length of unemployment

The Administrator shall consider length of unemployment in determining the suitability of an offer of work. An individual is entitled to a reasonable period of time within which to obtain employment at his highest skill and wage level before work requiring less skill or paying lower wages can be deemed suitable.

(Effective June 24, 1986)

Sec. 31-236-11. Sufficient cause for refusal of work or refusal of job referral

An individual may refuse suitable work or a job referral to suitable work for sufficient cause. Sufficient cause for a refusal of suitable work or a job referral to suitable work exists when there is a reasonable basis for such refusal. A reasonable basis for such refusal may include present employment, risk to safety resulting from the geographic location of the work, personal illness or disability, domestic responsibilities of a compelling nature, confinement, or attendance at a training course approved by the Administrator.

(Effective June 24, 1986)

Sec. 31-236-12. Refusal of work—labor dispute

The Administrator shall not find any work suitable if the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(Effective June 24, 1986)

Sec. 31-236-13. Suitable work—prevailing wages, hours, conditions

(a) The Administrator shall not deny benefits to an individual solely for refusing to accept work if the wages, hours or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(b) Where the Administrator has good cause to believe, or where the individual alleges that the wages, hours or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality, the Administrator shall contact a sufficient number of area employers engaged in similar work to establish with reasonable certainty what wages, hours or conditions are prevailing.

(Effective June 24, 1986)

Sec. 31-236-14. Refusal of work—union affiliation

(a) The Administrator shall not deny benefits to an individual solely on the basis of refusing to accept work if, as a condition of being employed, the individual would be required to join a company union, or resign or refrain from joining a bona fide labor organization.

(b) For the purposes of this section, a company union means any committee, employee representation plan or association of employees which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment which the employer has initiated or created or whose initiation or creation he has suggested or participated in or the formulation of whose governing rules or policies or the conduct of whose management, policies or elections the employer participates in or supervises or which the employer manages, finances, controls, dominates, or assists in maintaining or financing.

(Effective June 24, 1986)

Sec. 31-236-15. Effect of union or non-union status on suitability of work

Except as provided in section 31-236-14, the union or non-union character of work offered does not alone render such work unsuitable.

(Effective June 24, 1986)

Sec. 31-236-16. Refusal of work commencing between 1 and 6 a.m.

The Administrator shall not deny benefits to an individual solely for refusing to accept work if the position is for work which commences or ends between one and six o'clock in the morning and the Administrator finds that:

(1) such work or the surrounding conditions would constitute a high degree of risk to the health, safety or morals of the individual; or

(2) such work would be beyond the physical capabilities or fitness of the individual; or

(3) there is no suitable transportation available between the individual's home and his place of employment.

(Effective June 24, 1986)

Sec. 31-236-16a. Refusal of work—temporary help service/temporary employees

(a) Where the Administrator finds that a temporary employee of a temporary help service has refused to accept suitable employment when it is offered to him by such service upon completion of an assignment, the individual shall be ineligible for benefits until the individual has returned to work and earned six times his benefit rate.

(b) In determining whether work offered by a temporary help service is suitable, the Administrator shall consider all of the factors in section 31-236-1 through 31-236-16, inclusive. The Administrator shall consider the temporary nature of the work as a factor in determining suitability, unless the individual has been employed by one or more temporary help services and has worked for one or more temporary help services for more than thirty

calendar days.

(c) For purposes of this section, "temporary help service" means any person conducting a business which consists of employing individuals directly for the purpose of part-time or temporary help to others.

(d) For purposes of this section, "temporary employee" means an employee assigned to work for a client of a temporary help service.

(Adopted effective July 28, 1997)

Sec. 31-236-17. Voluntary leaving—general

(a) Except as provided in section 31-236-58 of the Regulations of Connecticut State Agencies, an individual shall be ineligible for benefits until the individual has earned at least ten times the individual's benefit rate if the Administrator finds that the individual has left suitable work voluntarily, as defined in section 31-236-18 of the Regulations of Connecticut State Agencies, and without good cause attributable to the employer, as defined in section 31-236-19 of the Regulations of Connecticut State Agencies.

(b) No individual shall be ineligible for benefits as a result of a voluntary leaving of work under any of the following circumstances:

(1) where the individual leaves suitable work for good cause attributable to the employer, including leaving as a result of changes in conditions created by the individual's employer;

(2) where the individual leaves work to care for the individual's spouse, child, or parent with an illness or disability, as defined in section 31-236(a)(16) of the Connecticut General Statutes and 31-236-23 of the Regulations of Connecticut State Agencies;

(3) where the individual leaves work due to the discontinuance of transportation, other than the individual's personally owned vehicle, used to get to and from work, provided no reasonable alternative transportation is available;

(4) where while on layoff from the individual's regular work the individual accepts other employment and leaves such other employment when recalled by the individual's former employer;

(5) where the individual leaves work which is outside the individual's regular apprenticeable trade to return to work in the individual's regular apprenticeable trade;

(6) where the individual leaves work solely by reason of governmental regulation or statute;

(7) where the individual leaves part-time work to accept full-time work;

(8) Where the individual leaves work to protect the individual, the individual's child, the individual's spouse or the individual's parent from becoming or remaining a victim of domestic violence, as defined in section 17b-112a of the Connecticut General Statutes, provided such individual has made reasonable efforts to preserve the employment; and

(9) Where the individual leaves work to accompany the individual's spouse to a place from which it is impractical for such individual to commute due to a change in location of the spouse's employment.

(Effective June 24, 1986; Amended July 28, 1997; Amended April 3, 2001; Amended November 9,

2010)

Sec. 31-236-18. Voluntary leaving defined

In order to establish that an individual left suitable work voluntarily, the Administrator must find that the individual committed the specific intentional act of terminating his own employment. The Administrator may not find that an individual left suitable work voluntarily if:

(1) upon notification by his employer of a future layoff or discharge, the individual exercised an option, expressly given by his employer, to leave his employment immediately; or

(2) the individual left work as the result of a demand by his employer to either quit or be discharged; or

(3) the individual tendered a notice of resignation to his employer and that employer discharged the individual before the expiration of the notice, except where the employer simultaneously paid the individual in full for the period of notice; or

(4) The individual attempted to rescind a notice of resignation tendered to his employer prior to the expiration of the notice period and the employer had not yet taken substantial steps to replace him.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-19. Good cause attributable to the employer

In determining whether an individual's reason for leaving suitable work is for good cause attributable to the employer, the Administrator must find that the reason relates to wages, hours or working conditions which comprise the employment that the individual voluntarily left.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-20. Good cause—wages

To determine that an individual voluntarily left suitable work for good cause attributable to the employer, the Administrator must find, with respect to wages, that the individual's employer:

(1) (A) breached the original employment agreement or made a material misrepresentation at the time of hire; or

(B) violated state or federal statute or regulation governing payment of wages and such violation had an adverse effect upon the individual; or

(C) failed to grant the individual a wage increase in violation of his employment contract or a previously established express commitment by his employer; or

(D) unilaterally reduced the individual's rate of pay; or

(E) failed to provide remuneration in the form of cash or negotiable check, unless the employment contract specifically provided otherwise; or

(F) paid compensation based on piece rate, commission or similar method which resulted in a wage significantly lower than that which the individual had reason to expect under the

employment agreement, provided such unsatisfactory wage was not caused by the individual's wilful disregard of the reasonable requirements for proper job performance; and

(2) the individual expressed his dissatisfaction regarding wages to his employer and unsuccessfully sought a remedy through those means reasonably available to him before leaving his employment.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-21. Good cause—hours

(a) To determine that an individual voluntarily left suitable work for good cause attributable to the employer, the Administrator must find, with respect to hours, that:

(1) the individual's employer:

(A) during the course of employment, substantially changed the hours established in the employment agreement and such change had a significantly adverse effect upon the individual; or

(B) violated state or federal law governing hours of employment and such violation had an adverse effect upon the individual; or

(C) required the individual to work irregular or excess hours which would endanger the individual's health or safety; and

(2) the individual expressed his dissatisfaction regarding hours to his employer and unsuccessfully sought a remedy through those means reasonably available to him before leaving his employment.

(b) A temporary reduction in working hours to less than full-time due to lack of work does not constitute good cause attributable to the employer for voluntarily leaving employment.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-22. Good cause—working conditions

(a) To determine that an individual voluntarily left suitable work for good cause attributable to the employer, the Administrator must find, with respect to working conditions, that:

(1) (A) during the course of employment, the individual's employer substantially changed a working condition established in the employment agreement and such change had a significantly adverse effect upon the individual; or

(B) working conditions endangered the individual's health or safety to a greater degree than is customary for the employer's industry; or

(C) working conditions threatened the individual's health, either by causing illness or by contributing to the aggravation or worsening of the individual's medical condition; or

(D) working conditions violated a state or federal statute or regulation governing worker health or safety and such violation had an actual or potential adverse effect upon the individual; or

(E) the individual's employer acted so as to deprive the individual of equal employment opportunity in violation of state or federal statute, regulation or executive order; or

(F) the individual's employer established and enforced a workplace rule which imposed a new and unreasonable burden on the individual, or was applied to the individual in a discriminatory manner; or

(G) the individual was subjected to conduct that a reasonable individual would consider physical abuse by a fellow employee or his supervisor or any other authorized representative of his employer; or

(H) the individual was subjected to a pattern of verbal abuse which would be offensive to a reasonable person by a fellow employee or his supervisor or any other authorized representative of his employer; or

(I) the individual's employer required the individual to perform an activity which was unlawful, dishonest, or would otherwise pose an undue risk to the morals of a reasonable individual, or would unduly interfere with the individual's free exercise of religious belief; or

(J) the individual was subjected to threat or intimidation as the result of participation in any lawful union activity; or

(K) the individual's employer breached a definite promise to promote the individual after the individual fulfilled the conditions for promotion; and

(2) the individual expressed his dissatisfaction regarding the working condition to his employer and unsuccessfully sought a remedy through those means reasonably available to him before leaving his employment and in the instance of subdivision (1) (C) of this section, the individual shall present competent evidence that:

(A) The medical condition complained of necessitated his leaving such employment; and

(B) The individual advised the employer of his condition; and

(C) The individual unsuccessfully sought a remedy through those means reasonably available to him before leaving employment.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-23. Voluntary leaving to care for seriously ill child, spouse or parent

(a) For the purposes of this section, the following definitions shall apply:

(1) "Illness or disability" means an illness or disability diagnosed by a health care provider that necessitates care for the ill or disabled person for a period of time longer than the employer is willing to grant leave, paid or otherwise.

(2) "Spouse" means the individual's partner in a marriage or civil union legally recognized by the state of Connecticut.

(3) "Child" means natural child, adopted child, stepchild, legal ward of the individual, or any child found to be a dependent under section 31-234 of the Connecticut General Statutes.

(4) "Parent" means the individual's natural parent, adoptive parent, step-parent, parent-

in-law or any person who served as the individual's legal guardian through the age of majority.

(5) "Health care provider" means (a) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; (b) a podiatrist, dentist, psychologist, optometrist or chiropractor authorized to practice by the state in which such person practices and performs within the scope of the authorized practice; (c) an advanced practice registered nurse, nurse practitioner, nurse midwife or clinical social worker authorized to practice by the state in which such person practices and performs within the scope of the authorized practice; (d) Christian Science practitioners listed with the first Church of Christ, Scientist in Boston, Massachusetts; (e) any medical practitioner from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; (f) a medical practitioner, in a practice enumerated in subparagraphs (a) to (e), inclusive, of this subdivision, who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country; or (g) such other health care provider as the labor commissioner approves, performing within the scope of the authorized practice.

(b) In order to determine that an individual is eligible for benefits under this section, the administrator shall find that:

(1) The individual, prior to separating from employment, informed the employer of the illness or disability of the individual's child, spouse or parent and of the need to leave work in order to provide care, unless it would have been futile for the individual to provide such notice;

(2) The employer did not communicate an offer of leave, paid or otherwise, to the individual for the period of time needed to care for the individual's spouse, child, or parent; and

(3) The individual has provided to the administrator documentation, signed by a health care provider, verifying the illness or disability and the period of time for which care is necessary.

(c) The administrator shall prescribe a form for the purpose of satisfying subsection (b)(3) of this section but may accept other documentation from a health care provider so long as it includes the information necessary under this section.

(Effective June 24, 1986; Amended November 9, 2010)

Sec. 31-236-23a. Voluntary leaving to escape domestic violence

(a) For purposes of this section, the following definitions shall apply:

(1) "Abuser" means a family or household member or a current or former sexual partner who engages in the domestic violence, which includes the forms of conduct described in subsection (2) of this section;

(2) "Victim of domestic violence," as defined in section 17b-112a(1) of the Connecticut General Statutes, as amended from time to time, means a person who has been battered or

subjected to extreme cruelty by (A) physical acts that resulted in or were threatened to result in physical injury, (B) sexual abuse, (C) sexual activity involving a child in the home, (D) being forced to participate in nonconsensual sexual acts or activities, (E) threats of or attempts at physical or sexual abuse, (F) mental abuse, or (G) neglect or deprivation of medical care; and

(3) "Family or household member" means an individual who falls within any of the categories, as defined in section 46b-38a(2) of the Connecticut General Statutes, as amended from time to time: (A) spouse, former spouse; (B) parents and their children; (C) persons eighteen years of age or older related by blood or marriage; (D) persons sixteen years of age or older other than those persons in subdivision (C) of this subsection presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship.

(4) "Child" means natural child, adopted child, stepchild, legal ward of the individual, or any child found to be a dependent under section 31-234 of the Connecticut General Statutes.

(5) "Parent" means the individual's natural parent, adoptive parent, step-parent, parent-in-law or any person who served as the individual's legal guardian through the age of majority.

(6) "Spouse" means the individual's partner in a marriage or civil union legally recognized by the state of Connecticut.

(b) The Administrator shall not disqualify an individual from receiving benefits because the individual left suitable work to protect the individual, the individual's child, the individual's spouse or the individual's parent from becoming or remaining a victim of domestic violence, as defined in subsection (a) of this section, provided such individual has made reasonable efforts to preserve the employment.

(c) (1) The Administrator shall consider the specific facts and circumstances of the individual, the employment, and the domestic violence involved in determining eligibility under this section. The individual shall provide the Administrator with available evidence necessary to support the individual's claim that he or she left the employment in order to protect the individual, the individual's child, the individual's spouse or the individual's parent from becoming or remaining a victim of domestic violence. Evidence of domestic violence may include, but is not limited to: (A) police, government agency or court records; (B) documentation from a shelter worker, legal, medical, clerical or other professional from whom the individual has sought assistance in dealing with domestic violence; or (C) a statement from an individual with knowledge of the circumstances which provide the basis for the claim of domestic violence.

(2) An individual's allegations of domestic violence, if found credible by the Administrator or trier of fact, may be sufficient to make an affirmative determination of the fact of domestic violence.

(3) The filing of a civil or criminal complaint against the alleged abuser shall not be

required as a prerequisite in order to establish the fact of domestic violence. Nor shall such complaint be required to establish reasonable efforts to preserve the employment.

(4) Upon an affirmative determination of the fact of domestic violence, the Administrator shall determine whether or not the reason the individual left employment was to protect the individual, the individual's child, the individual's spouse or the individual's parent from becoming or remaining a victim of domestic violence.

(d) In assessing whether the individual made reasonable efforts to preserve employment, the Administrator shall consider:

(1) Whether it was feasible under the circumstances for the individual to inform the employer of the domestic violence or threat of domestic violence; and

(2) If so, whether the employer was actually informed; and

(3) Whether the employer responded by offering the individual continuing employment which would not compromise the safety of the individual, the individual's child, the individual's spouse or the individual's parent.

(e) When the individual reasonably believed that preserving employment would, itself, expose the individual, the individual's child, the individual's spouse or the individual's parent to a safety risk, the Administrator may conclude that no efforts to preserve employment would be reasonable.

(f) When the individual reasonably believed that relocation was necessary to ensure the safety of the individual, the individual's child, the individual's spouse or the individual's parent and such relocation interfered with the individual's ability to preserve employment, the Administrator may conclude that no efforts to preserve employment would be reasonable.

(g) A finding of nondisqualification under this Section does not relieve the individual of the responsibility to comply with the eligibility requirements enumerated in section 31-235 of the Connecticut General Statutes during any week for which benefits are claimed.

(Adopted effective April 3, 2001; Amended November 9, 2010)

Sec. 31-236-23b. Voluntary leaving to follow spouse

(a) The Administrator shall not disqualify an individual from receiving benefits because the individual left suitable work to accompany such individual's spouse (1)to a place from which it is impractical for the individual to commute(2)due to a change in location of the spouse's employment.

(b) For purposes of this section, "spouse" means the individual's partner in a marriage or civil union legally recognized in the State of Connecticut.

(c) In determining whether it is impractical for an individual to commute from the new place of residence to the individual's place of employment, the Administrator shall consider:

(1) Availability of public transportation;

(2) Personal means of transportation available to the individual;

(3) Common commuting patterns for individuals similarly situated;

(4) The individual's physical condition; and

(5) Actual distance in miles between the individual's new residence and the place of employment.

(d) The individual shall provide the Administrator with available evidence necessary to support the individual's claim that the individual left the employment in order to accompany the individual's spouse to the place of the spouse's new employment. Such evidence may include, but is not limited to:

(1) A letter of offer provided to the spouse by the new employer or a letter from the spouse's current employer referencing a transfer to a new location;

(2) A paycheck receipt from the spouse's new employer;

(3) Workforce agency wage records, or similar records from other government records; or

(4) Any written communication between the spouse's employer and the spouse verifying the employment.

(e) The Administrator may request the spouse's Social Security number for verification of employment.

(f) In the case of military spouses, the Administrator shall not disqualify an individual from receiving benefits because the individual left suitable work to accompany such individual's spouse who is on active duty with the armed forces of the United States and is required to relocate by the armed forces. Such individual, however, shall provide the Administrator with available evidence necessary to support the individual's claim, such as a documentation verifying the spouse's mandatory military transfer.

(Adopted effective November 9, 2010)

Sec. 31-236-24. Discharge and suspension—general

An individual shall be ineligible for benefits until he has earned at least ten times his benefit rate if the Administrator finds that:

(1) he has been discharged or suspended for felonious conduct, as defined in section 31-236-25, in the course of his employment, as defined in section 31-236-26c; or

(2) he has been discharged or suspended for conduct in the course of his employment constituting larceny of property or service, as defined in section 31-236-25a, whose value exceeds twenty-five dollars or larceny of currency, regardless of the value of such currency; or

(3) he has been discharged or suspended for wilful misconduct in the course of his employment, as defined in section 31-236-26; or

(4) he has been discharged or suspended for just cause, as defined in section 31-236-38; or

(5) he has been discharged or suspended for participation in an illegal strike as determined by state or federal laws or regulations; or

(6) having been sentenced to a term of imprisonment of thirty days or longer and having commenced serving such sentence, he has been discharged or suspended during such period of imprisonment; or

(7) he has been disqualified under state or federal law from performing the work for which he was hired as a result of a drug or alcohol testing program mandated by and conducted in accordance with such law.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-25. Felonious conduct

Felonious conduct is any act by an individual in the course of his employment, as defined in section 31-236-26c, which would constitute a felony under the laws of the state of Connecticut or under federal law, regardless of whether or not criminal proceedings have been instituted.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-25a. Larceny

(a) An individual is ineligible for benefits if he has been discharged or suspended for conduct in the course of his employment, as defined in Section 31-236-26c, constituting larceny of property or services whose value exceeds twenty-five dollars, or larceny of currency, regardless of the value of such currency.

(b) To find that an individual has committed larceny, the Administrator must find that, with intent to deprive another of property or services or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property or services from an owner in the course of his employment.

(c) In determining whether the value of the property or services exceeds twenty-five dollars, the Administrator shall consider the market value of the property or services at the time and place of the larceny or, if such value cannot be satisfactorily ascertained, the cost of the replacement of the property or services within a reasonable time after the larceny.

(Adopted effective July 28, 1997)

Sec. 31-236-26. Wilful misconduct - general

To find that any act or omission is wilful misconduct in the course of employment, as defined in section 31-236-26c of the Regulations of Connecticut State Agencies, the Administrator shall find that:

(1) the individual committed deliberate misconduct in wilful disregard of the employer's interest, as defined in section 31-236-26a of the Regulations of Connecticut State Agencies; or

(2) the individual committed a single knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, provided such violation is not a result of the employee's incompetence, as defined in section 31-236-26b of the Regulations of Connecticut State Agencies; or

(3) in the case of absence from work, the employee was absent without good cause for absence from work, as defined in section 31-236-26d of the Regulations of Connecticut State Agencies or without notice, as defined in said section 31-236-26d, for three separate

instances, as defined in said section 31-236-26d, within a twelve-month period.

(Effective June 24, 1986; Amended July 27, 1997; Amended June 7, 2005)

Sec. 31-236-26a. Deliberate misconduct

In order to establish that an individual was discharged or suspended for deliberate misconduct in wilful disregard of the employer's interest, the Administrator must find all of the following:

(a) **Misconduct.** To find that any act or omission is misconduct the Administrator must find that the individual committed an act or made an omission which was contrary to the employer's interest, including any act or omission which is not consistent with the standards of behavior which an employer, in the operation of his business, should reasonably be able to expect from an employee.

(b) **Deliberate.** To determine that misconduct is deliberate, the Administrator must find that the individual committed the act or made the omission intentionally or with reckless indifference for the probable consequences of such act or omission.

(c) **Wilful Disregard of the Employer's Interest.** To find that deliberate misconduct is in wilful disregard of the employer's interest, the Administrator must find that:

(1) the individual knew or should have known that such act or omission was contrary to the employer's expectation or interest; and

(2) at the time the individual committed the act or made the omission, he understood that the act or omission was contrary to the employer's expectation or interest and he was not motivated or seriously influenced by mitigating circumstances of a compelling nature. Such circumstances may include:

(A) events or conditions which left the individual with no reasonable alternative course of action; or

(B) an emergency situation in which a reasonable individual in the same circumstances would commit the same act or make the same omission, despite knowing it was contrary to the employer's expectation or interest.

(Adopted effective July 28, 1997)

Sec. 31-236-26b. Knowing violation

In order to establish that an individual was discharged or suspended for a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, the Administrator must find all of the following:

(a) **Knowing Violation.** To find that an individual engaged in a single knowing violation of a rule or policy of the employer, the Administrator must find that:

(1) the individual knew of such rule or policy, or should have known of the rule or policy because it was effectively communicated to the individual. In determining whether the rule or policy was effectively communicated to the individual, the Administrator may consider the manner in which the rule or policy was communicated. Evidence of the employer's actions, including but not limited to, posting of the rule or policy within the company at a

place likely to be observed by the employees; explanation of the rule at a training or orientation session; verbal explanation of the rule to the individual; distribution of a document to the individual which contained the rule or policy; warnings or other disciplinary action; and evidence of the individual's receipt of any document containing the rule or policy should be considered in determining whether the rule or policy was effectively communicated by the employer to the individual;

(2) the individual's conduct violated the particular rule or policy; and

(3) the individual was aware he was engaged in such conduct.

(A) If the rule or policy requires an intentional act, the Administrator must inquire into the individual's intent to violate such rule or policy.

(i) An example of a rule or policy that requires an intentional act is a rule prohibiting falsification or deliberate misrepresentation of an employer's business records.

(b) **Reasonable Rule or Policy.** To find that a rule or policy instituted by an employer is reasonable, the Administrator must find that the rule or policy furthers the employer's lawful business interest. The administrator may find an employer rule or policy to be reasonable on its face. For example, a rule prohibiting fighting in the workplace is reasonable on its face. When evidence is offered to demonstrate that the rule or policy is unreasonable, the Administrator may consider whether:

(1) the rule or policy was reasonable in light of the employer's lawful business interest. Examples of reasonable rules or policies that further the employer's lawful business interest may include, but are not limited to, a rule or policy prohibiting eating at the employee's work station to ensure office cleanliness; and a rule or policy requiring employees to wear a hair net or hat while preparing food for customers for health reasons; and

(2) there is a clear relationship between the rule or policy, the conduct regulated and the employer's lawful business interest.

(c) **Uniformly Enforced.** To find that a rule or policy of the employer was uniformly enforced, the Administrator must find that similarly situated employees subject to the workplace rule or policy are treated in a similar manner when a rule or policy is violated.

(d) **Reasonable Application.** To find that a rule or policy of an employer was reasonably applied, the Administrator must find:

(1) that the adverse personnel action taken by the employer is appropriate in light of the violation of the rule or policy and the employer's lawful business interest;

(A) An example of an adverse personnel action that is appropriate in light of the violation of a rule or policy prohibiting tardiness is an individual's discharge or suspension for habitual tardiness without reasonable excuse after warnings.

(B) An example of an adverse personnel action that is not appropriate in light of the violation of the rule or policy is an individual's discharge for violating a dress code policy, one time, by wearing a skirt that is one inch shorter than that allowable by the policy; and

(2) that there were no compelling circumstances which would have prevented the individual from adhering to the rule or policy. Examples of circumstances which are of a compelling nature include, but are not limited to, serious weather-related problems, rules

which are contradictory or require actions that are illegal or improper, rules the adherence to which could result in injury to the health or safety of an individual or other objectively verifiable circumstances which are of a compelling nature.

(e) **Incompetence.** To find that the violation of a rule or policy of the employer is a result of the individual's incompetence and therefore is not wilful misconduct, the Administrator must find that the individual was incapable of adhering to the requirements of the rule or policy due to a lack of ability, skills or training, unless it is established that the individual wilfully performed below his employer's standard and that the standard was reasonable.

(1) Examples of a violation of a rule or policy due to incompetence include, but are not limited to, an employee who is required to perform at a certain level of word processing proficiency, but who fails to perform at such level because he does not have the requisite skills, training or experience; and an employee who is required to meet the employer's standard requiring employees to assemble 20 widgets per hour, but who fails to meet such standard because he is physically unable to meet those requirements.

(Adopted effective July 28, 1997)

Sec. 31-236-26c. In the course of employment

(a) In order for the Administrator to find deliberate misconduct, as defined in section 31-236-26a, or a knowing violation of an employer's rule or policy, as defined in section 31-236-26b, he must find that the act or omission occurred in the course of employment. In the course of employment means that the conduct must take place during working hours, at a place the employee may reasonably be, and while the employee is reasonably fulfilling the duties of his employment or otherwise performing any service for the employer's benefit.

(b) Off-duty conduct may be considered to have occurred in the course of employment if it is committed by exploitation of the employment relationship.

(1) Exploitation of the employment relationship may be found in cases where the individual engaged in off-duty conduct which was accomplished by knowledge or access acquired through the employment relationship.

(A) Some examples of exploitation of the employment relationship include, but are not limited to, an individual who utilizes his knowledge of the location of his employer's cash register and the fact that a recently installed security system was not yet operational to burglarize the premises; and an individual who uses a company van after hours for his unauthorized personal use.

(c) Off-duty misconduct may be considered to have occurred in the course of employment if it is committed by a public trust employee.

(1) An individual may be found to be a public trust employee if:

(A) his primary role and job function is to serve as a guardian of the public trust and safety;

(B) his job effectiveness is expressly dependent upon the public's respect and confidence, both on and off-duty;

(C) the individual has explicit written notice of the expected standard of off-duty

conduct; and

(D) the individual has agreed to the expected standard of off-duty conduct.

(2) Public trust employees may include, but are not limited to, police officers, teachers, and correctional officers.

(Adopted effective July 28, 1997)

Sec. 31-236-26d. Absence from work

(a) **Application**. The Administrator shall apply this section to determine eligibility in all cases in which the individual was discharged or suspended due to absence from work.

(b) **Definitions.** For the purposes of this section, the following definitions shall apply:

(1) "Good cause for absence from work" means any compelling personal circumstance which would normally be recognized by the individual's employer as a proper excuse for absence, or which would prevent a reasonable person under the same conditions from reporting for work. Examples of such good cause shall include, but not be limited to: personal illness or injury which prevented the individual from reporting to work; a serious isolated transportation problem over which the individual had no control; or a sudden event which required the individual to address a compelling personal responsibility or family emergency.

(2) "Notice" means notification to the employer of absence from work through any reasonable method and within any reasonable timeframe prescribed by the employer.

(3) "Separate instance" means "separate instance" as defined in section 31-236(a)(16) of the Connecticut General Statutes.

(c) **Elements of wilful misconduct – Absence from work.** In order to establish that an individual was discharged or suspended for absence from work which constituted wilful misconduct in the course of employment under section 31-236-26 of the Regulations of Connecticut State Agencies, the Administrator shall find that all of the following elements have been met:

(1) the individual had three separate instances of absence from work;

(2) with respect to each instance of absence, the individual either –

(A) did not have good cause for absence from work, or

(B) did not provide notice of such absence to the employer which could have been reasonably provided under the circumstances; and

(3) the three separate instances of absence occurred within a twelve-month period.

(d) **Failure to give notice.** Even if the Administrator determines that the individual had good cause for absence from work, such absence shall be counted as a separate instance under this section if the individual failed to give notice of such absence when such notice could have been reasonably provided under the circumstances.

(e) **Compelling personal circumstances.** The Administrator shall not find that an individual could have reasonably provided notice if the individual's failure to provide notice was due to compelling personal circumstances which would have prevented a reasonable person in the same circumstances from providing notice.

(f) **Consecutive days – Separate Instances**. Where an absence without good cause for absence from work or without notice continued for two or more consecutive days, the Administrator shall rely upon the following table to determine the number of separate instances of absence under this section.

Consecutive Days	Instance(s) of Absence
2	1
3	2
4	2
5	3
6	3

(g) **Exclusions**.

(1) Tardiness. An occasion of tardiness is not a separate instance of absence under this section. The Administrator shall determine the eligibility of any individual who was discharged or suspended for tardiness under the provisions of section 31-236-28 of the Regulations of Connecticut State Agencies.

(2) Unauthorized leaving of work. An individual's unauthorized leaving of his work site during scheduled working hours after the individual has reported to work is not a separate instance of absence under this section. The Administrator shall determine the eligibility of any individual who was discharged or suspended for such unauthorized leaving under either section 31-236-26a or section 31-236-26b of the Regulations of Connecticut State Agencies.

(Adopted effective June 7, 2005)

Sec. 31-236-27. Repealed

Repealed July 28, 1997.

Sec. 31-236-28. Discharge or suspension for tardiness

The Administrator shall find that tardiness constitutes wilful misconduct, under section 31-236-26, only if the pattern of tardiness constitutes either wilful disregard of the employer's interest as defined in section 31-236-26a of the regulations or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, when reasonably applied, as defined in section 31-236-26b of these regulations.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-29. Discharge or suspension for falsification of application

The Administrator shall find that an individual committed an act of wilful misconduct, under section 31-236-26, when it is established that the individual intentionally falsified an employment application which created a material misrepresentation of the individual's

qualifications or suitability for the job.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-30. Discharge or suspension for garnishment of wages

The Administrator shall not deny benefits to any individual who was discharged or suspended because his wages were garnished by a creditor.

(Effective June 24, 1986)

Sec. 31-236-31—31-236-34. Repealed

Repealed July 28, 1997.

Sec. 31-236-35. Discharge or suspension for union activities

The Administrator shall not find an individual ineligible for benefits if it is established that he was discharged for engaging in lawful union activity, regardless of whether or not proceedings under any applicable federal or state labor laws have been instituted.

(Effective June 24, 1986)

Sec. 31-236-36. Repealed

Repealed July 28, 1997.

Sec. 31-236-37. Discharge—addiction to alcohol or drugs

The Administrator shall consider addiction to alcohol or other drugs to be an illness. Where the Administrator finds that an individual was discharged for misconduct resulting from alcohol or drug usage and it is established, by competent medical or professional evidence or testimony that the individual is physically addicted to alcohol or any other drug, such misconduct shall not be deemed intentional or deliberate or reckless, and therefore shall not constitute wilful misconduct under section 31-236-26a.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-38. Discharge—just cause (Repealed)

Repealed June 11, 2014.

(Effective June 24, 1986; Repealed June 11, 2014)

Notes: For 2014 repeal, see Sec. 54 of Public Act 14-187. (June 11, 2014)

Sec. 31-236-39. Leaving by reason of governmental regulation or statute

Where the Administrator finds that an individual left work because the enactment or enforcement of a governmental statute or regulation legally precluded him from performing his job, the individual shall not be ineligible for benefits on account of such leaving.

(Effective June 24, 1986)

Sec. 31-236-40. Labor dispute—general

An individual shall be ineligible for benefits during any week for which the Administrator finds that his total or partial unemployment is due to the existence of a labor dispute other than a lockout at the factory, establishment or other premises at which he is or has been employed, provided the provisions of this subsection shall not apply if it is shown to the satisfaction of the Administrator that:

(1) he is not participating in or financing or directly interested in the labor dispute which caused the unemployment, and

(2) he does not belong to a trade, class or organization of workers, members of which, immediately before the commencement of the labor dispute, were employed at the premises at which the labor dispute occurred, and are participating in or financing or directly interested in the dispute; or

(3) his unemployment is due to the existence of a lockout.

(Effective June 24, 1986)

Sec. 31-236-41. Labor dispute—lockout

(a) A lockout exists whether or not such action is to obtain for the employer more advantageous terms when

(1) an employer fails to provide employment to his employees with whom he is engaged in a labor dispute, either by physically closing his plant or informing his employees that there will be no work until the labor dispute has terminated, or

(2) an employer makes an announcement that work will be available after the expiration of the existing contract only under terms and conditions which are less favorable to the employees than those current immediately prior to such announcement; provided, in either event, the recognized or certified bargaining agent shall have advised the employer that the employees with whom he is engaged in the labor dispute are ready, able and willing to continue working pending the negotiation of a new contract under the terms and conditions current immediately prior to such announcement.

(b) For purposes of this regulation, "recognized or certified" means authorized to represent employees:

(1) in accordance with state or federal labor law, or

(2) by the employer's express or implied acknowledgement, or

(3) by any informal process by a majority of employees involved in the labor dispute.

(Effective June 24, 1986)

Sec. 31-236-42. Discharge during the course of a labor dispute

An individual's unemployment ceases to be due to the existence of a labor dispute when his employer notifies the individual that he is discharged and indicates an unwillingness to consider reinstatement of the individual at the end of the labor dispute. In determining whether an individual's employment continues to be due to the existence of a labor dispute or is the result of a discharge by his employer, the Administrator may consider the date of

the discharge and any employer actions signifying permanent severance of employment, including payment of severance or vacation pay, or any other accrued benefits, or any other payment customarily associated with separation.

(Effective June 24, 1986)

Sec. 31-236-43. Labor dispute—voluntary leaving

An individual who is ineligible for benefits because his unemployment was due to the existence of a labor dispute, whether or not he subsequently obtains other employment, remains ineligible due to the existence of a labor dispute unless he can demonstrate that he severed his relationship with the employer engaged in the labor dispute, or that the labor dispute has ended.

(Effective June 24, 1986)

Sec. 31-236-44. Effect of retirement during the course of a labor dispute

An individual whose ineligibility for benefits is based originally on the existence of a labor dispute, and who subsequently retires, either voluntarily or involuntarily, shall be considered by the Administrator to be unemployed due to retirement rather than to the existence of a labor dispute.

(Effective June 24, 1986)

Sec. 31-236-45. Employer remuneration-general

(a) An individual shall be ineligible for benefits during any week with respect to which the individual has received or is about to receive remuneration from his employer or his employer's agent in any of the following forms:

(1) wages in lieu of notice, including any payment made under the federal worker adjustment and retraining notification act; or dismissal payments, including severance or separation payment by an employer to an employee beyond the employee's wages upon termination of the employment relationship, except as provided in section 31-236-46(c); or

(2) any payment by way of compensation for loss of wages or any other state or federal unemployment benefits.

(b) When an individual receives or is about to receive a payment, described within this section, corresponding to a given week in an amount less than his weekly benefit rate, the Administrator shall deduct such payment from his entitlement for that week dollar for dollar.

(c) This section shall not apply to remuneration in the form of mustering out pay, terminal leave pay or any allowance or compensation granted by the United States under an Act of Congress to an ex-serviceperson in recognition of his former military service, or any service-connected pay or compensation earned by an ex-serviceperson paid before or after separation or discharge from active military service.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-46. Dismissal payments; wages in lieu of notice

(a) The Administrator shall allocate any wages in lieu of notice or dismissal payments to the week or weeks immediately following separation from employment, except that where an individual's separation occurs before the end of his scheduled work week, the allocation of such payment shall be effective with the day immediately following separation.

(b) Where the Administrator finds that all the terms essential to the computation and distribution of a payment described within this section have not been agreed upon, allocation of such payment shall be effective with the week of receipt.

(c) Where a condition is attached by an employer to the receipt of a payment described within this section which requires the individual to waive or forfeit a right or claim independently established by statute or common law against the employer, the administrator shall find such payment to be non-allocable.

(d) For the purposes of this section, statutory rights or claims include but are not limited to rights established under or claims relative to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1991, the Employee Retirement Income Security Act of 1974, the Americans With Disabilities Act of 1990, the state or federal Family Medical Leave Act and any other local, state or federal law, regulation or ordinance. For the purposes of this section, common law claims include but are not limited to claims relative to wrongful discharge under Connecticut law. Contractual recall rights do not constitute statutory or common law rights.

(e) For the purposes of this section, "dismissal payments" means any severance or separation payment, by an employer to an employee beyond his wages upon termination of the employment relationship.

(Effective June 24, 1986; Amended July 28, 1997)

Sec. 31-236-47. Payment by way of compensation for loss of wages

(a) In order to determine that a payment is a payment by way of compensation for loss of wages with respect to a given week or weeks, the Administrator must find that the payment is provided for by the employment agreement and represents compensation in an amount substantially equivalent to the pay an individual would have received for services rendered if he had actually worked.

(b) The Administrator shall find vacation pay to be a payment by way of compensation for loss of wages when the vacation pay relates to an identifiable week or weeks, either designated as a vacation period by arrangement between the individual, or his representative, and his employer or which is the customary vacation period in the employer's industry. Where the vacation pay relates to an identifiable week or weeks, the Administrator shall allocate the vacation payment to the identifiable week or weeks.

(c) Except as provided in subsection (d) of this section, where the Administrator finds that a vacation payment does not relate to an identifiable week or weeks, the payment shall be allocated effective with the week of receipt or the individual's first day of unemployment not otherwise compensated, whichever is later.

(d) Where an employer has closed a Connecticut facility and as a result, an individual has no substantive reemployment rights with that employer, the payment of accrued vacation pay shall not be allocable.

(e) Where an individual is not required to take equivalent vacation time in order to receive vacation pay for a given period under his employment agreement, the Administrator shall not consider such payment to be a payment by way of compensation for loss of wages, but instead shall find it to be a non-allocable bonus payment.

(Effective June 24, 1986)

Sec. 31-236-48. Other unemployment benefits; workers' compensation

An individual shall be ineligible for benefits during any week with respect to which the individual has received or is about to receive remuneration in the form of:

(1) unemployment benefits under any federal law, except for benefits paid under section 407 (a) of the Disaster Relief Act of 1974; or

(2) unemployment benefits paid by any state other than Connecticut; or

(3) compensation for temporary disability under any worker's compensation law, except that where an individual is being compensated for temporary partial incapacity for a given week in an amount less than his weekly benefit rate, the Administrator shall deduct such payment from his entitlement for that week dollar for dollar.

(Effective June 24, 1986)

Sec. 31-236-49. Allocation of vacation pay during a week in which holiday pay is allocable

In the event that a paid holiday falls during a week in which vacation pay is allocable, the Administrator shall allocate both payments to the same week.

(Effective June 24, 1986)

Sec. 31-236-50. Allocation of strike benefits

Payments rendered by a union to an individual involved in a labor dispute shall have no effect on the individual's benefit entitlement.

(Effective June 24, 1986)

Sec. 31-236-51. Supplemental unemployment benefit (SUB) payments

Any payments made under a contractual or employer-sponsored plan, created for the purpose of supplementing unemployment benefits is not compensation for loss of wages and shall have no effect on the individual's benefit entitlement.

(Effective June 24, 1986)

Sec. 31-236-52. Receipt of welfare benefits

Any payment made under any public welfare or workfare program shall have no effect

on the individual's benefit entitlement.

(Effective June 24, 1986)

Sec. 31-236-53. Sick leave

Where an individual's employment has terminated, the Administrator shall consider any payment for unused sick leave to be a bonus, and as such, non-allocable.

(Effective June 24, 1986)

Sec. 31-236-54. Voluntary leaving to attend school

(a) An individual shall be ineligible for benefits if the Administrator finds that the individual has left employment to attend a school, college or university as a regularly enrolled full-time student for so long as the individual is in attendance.

(b) For purposes of this section, "school" means an established institution of vocational, academic or technical instruction or education, other than a college or university.

(c) For purposes of this section, "regularly enrolled full-time student" means an individual who has registered for sufficient credits to constitute full-time status, as determined by the school, college or university.

(Effective June 24, 1986)

Sec. 31-236-55. Second benefit year

An individual shall be ineligible for benefits if the Administrator finds that, having received benefits in a prior benefit year, the individual has not again become employed and been paid wages since the commencement of said prior benefit year in an amount equal to the greater of three hundred dollars or five times his weekly benefit rate by an employer subject to the provisions of chapter 567 or by an employer subject to the provisions of any other state or federal unemployment compensation law.

(Effective June 24, 1986)

Sec. 31-236-56. Voluntary retirement

(a) Where the Administrator determines that an individual voluntarily retired, the individual shall be ineligible for benefits until he has again become employed and been paid wages at least 40 times his benefit rate, except that an individual shall be eligible for benefits if the Administrator finds that an individual retired because:

(1) his work had become unsuitable considering his physical condition and the degree of risk to his health and safety; and

(2) he had requested of his employer other work which was suitable, provided that it is established that such a request could have provided a reasonable alternative to leaving employment; and

(3) his employer did not offer him suitable work.

(b) The Administrator shall find that an individual voluntarily retired if the individual terminated his employment solely by his own choosing pursuant to a non-compulsory

retirement plan, whether or not pension benefits become payable as a result of such termination.

(c) The Administrator shall not find that an individual voluntarily retired if such termination was primarily induced by efforts of the individual's employer to close his facility or eliminate the individual's position, or if the individual reasonably believed his employment would be severed if he rejected his employer's inducement to retire.

(Effective June 24, 1986)

Sec. 31-236-57. Eligibility of an individual in training approved under the Trade Act of 1974

(a) The Administrator shall not deny benefits to an otherwise eligible individual for any week because he is in training approved under Section 236 (a) (1) of the Trade Act of 1974, or because he left work to enter such training, provided the work left is not suitable work, or because, during any week he was in such training, the Administrator found he was unavailable for work, failed to make reasonable efforts to obtain work or refused to accept work.

(b) For purposes of this regulation, "suitable work" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of the Trade Act of 1974.

(Effective June 24, 1986)

Sec. 31-236-58. Voluntary separations from part-time employment

(a) The Administrator shall find that any individual who has voluntarily left part-time employment under conditions which would otherwise render him ineligible pursuant to Section 31-236 (a) (2) (A) of the General Statutes, who has not earned ten times his weekly benefit rate since such separation and who is otherwise eligible for benefits is eligible to receive benefits only as described in subdivision (1) or (2) of this subsection.

(1) If the individual's separation from part-time employment precedes a compensable separation from his full-time employment, the Administrator shall determine the individual's weekly entitlement for each week of partial eligibility pursuant to this subdivision solely on the basis of those wages paid to him for any employment during the base period of his current benefit year other than such part-time employment.

When an individual is subject to partial eligibility pursuant to this subdivision, his maximum limitation on total benefits during his benefit year shall be reduced to reflect such redetermined weekly entitlement, unless and until the individual earns ten times his weekly benefit rate. Effective with the week in which the individual first earns ten times his weekly benefit rate or the week in which he first files a continuing claim thereafter, the individual's eligibility shall be based on his weekly benefit rate, and his maximum limitation on total benefits shall again be equal to twenty-six times his weekly benefit rate.

(2) If the individual's separation from part-time employment follows a compensable separation from his full-time employment, the Administrator shall find that for each week of partial eligibility pursuant to this subdivision, the individual is entitled to benefits in an amount equal to the lesser of the partial unemployment benefits he would have received pursuant to Section 31-229 of the General Statutes, but for such separation from his part-time employment, or the partial unemployment benefits for which he would be eligible under Section 31-229 based on any subsequent part-time employment. The Administrator shall determine the individual's benefits payable for each week of partial eligibility by deducting from his weekly benefit rate two-thirds, rounded to the next higher whole dollar, of the average weekly wages, rounded to the nearest whole dollar, earned by the individual at the subject part-time employment, except that for any week in which the individual has actually engaged in any part-time employment, the Administrator shall make such determination based on actual earnings if higher than average weekly wages, as determined under this subdivision.

The Administrator shall ascertain the average weekly wages earned by the individual at the part-time employment which the individual left by:

(A) obtaining from such part-time employer (or from the individual, through appropriate documentation such as the individual's pay stubs) certification of the gross wages earned by the individual with respect to each of the six weeks immediately preceding the week in which the individual separated from such part-time employment, and

(B) dividing the total of such wages by six, or by the number of weeks in which the individual engaged in part-time employment, if less than six.

The individual's maximum limitation on total benefits pursuant to Section 31-231b of the General Statutes shall not be affected by a determination of partial eligibility pursuant to this subdivision.

Any determination of partial eligibility pursuant to this subdivision shall extend only until the individual has earned ten times his weekly benefit rate subsequent to his separation from such part-time employment.

(Effective May 30, 1989)

Agency

Department of Labor

Subject

Guidelines for Approval by the Labor Commissioner of Job Training Programs, Job Retraining Programs, and Claimants Under Sec. 31-236b, C.G.S.

Section

§ 31-236b-1

CONTENTS

Guidelines for Approval by the Labor Commissioner of Job Training Programs, Job Retraining Programs, and Claimants Under Sec. 31-236b, C.G.S.

Sec. 31-236b-1. Approved training

(a) An individual's enrollment in training shall be approved for the purpose of Section 31-236b if the Labor Commissioner finds that the training is sponsored or approved by the State Labor Department, or any other department of state or federal government or municipality in the state, or any labor organization, or private employer and meets these guidelines for approval by the Labor Commissioner:

(1) the training relates to or develops positive work search approaches to occupations or skills for which there are, or are expected to be, immediate future employment opportunities in the labor market area in which the individual intends to seek work;

(2) reasonable employment opportunities for which the unemployed individual is fitted by training, experience and physical capabilities at his highest skill level do not exist or have substantially diminished in his labor market;

(3) the individual has the required qualifications and aptitudes as determined by the training facility or sponsor to complete the course successfully.

(b) Such approval shall continue for each week the individual files a claim for benefits and provides certification from the training facility that he is enrolled in and satisfactorily pursuing the course of instruction.

(c) Any individual who has accepted training under Title III Section 302 of the Job Training Partnership Act (P.L. 97-300) shall be deemed to be in training with the approval of the administrator pursuant to Section 31-236b.

(Effective October 30, 1985)

Agency

Department of Labor/Employment Security Board of Review

Subject

Proceedings on Disputed Matters Pertaining to Unemployment Compensation Claims

Inclusive Sections

§§ 31-237g-1—31-237g-107

CONTENTS

Article I

General Provisions

Article II

Appeals to the Referee

Proceedings on Disputed Matters Pertaining to Unemployment Compensation Claims

Article I

General Provisions

Sec. 31-237g-1. Definitions; interpretations

(Statutory reference: 31-237a, 31-237f, 31-222c)

(a) As used in Secs. 31-237g-1 to 31-237g-60 of these regulations inclusive, unless the context clearly indicates otherwise:

(1) "Acting Chairman" means the person serving as Chairman in the absence of the Chairman of the Board of Review.

(2) "Address" means mailing address.

(3) "Administrator" means the Commissioner of the Connecticut Labor Department whose address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and his designated representatives.

(4) "Agent State" means any state in which an individual files a claim for unemployment compensation benefits against another state.

(5) "Aggrieved" means that the given party's interests with regard to the Unemployment Compensation laws are affected by the decision in question.

(6) "Amicus Curiae" means a person, organization or entity permitted to participate in a proceeding of potentially significant precedential value, for purposes of advocating the interests of a constituency which stands to be significantly affected by the decision issued in such proceeding or availing the Appeals Division of specialized knowledge or expertise on the subject involved in such proceeding.

(7) "Appeals Division" means the Employment Security Appeals Division of the Connecticut Labor Department consisting of the Board of Review, the Referees and all supporting staff employed in the Appeals Division for discharge of the Appeals Divisions' responsibilities set forth in these regulations and the Connecticut General Statutes.

(8) "Attorney" means an attorney-at-law admitted to the Connecticut Bar.

(9) "Authorized Agent" means any individual, organization or business that is, pursuant to Section 31-237g-11(b) of these regulations, duly authorized by a party to represent such party in a proceeding before the Appeals Division, or that is required to register with the board pursuant to Sections 31-272-1 to 31-272-18 of the Regulations of Connecticut State Agencies.

(10) "Board" means the Employment Security Board of Review.

(11) "Chairman" means the Chairman of the Employment Security Board of Review, whose address is 38 Wolcott Hill Road, Wethersfield, Connecticut 06109.

(12) "Chief Referee" means the Chief Referee of the Referee Section.

(13) "Employment Security Division" means the Employment Security Division of the Connecticut Labor Department.

(14) "Employment Security Office" means the Public Employment Bureau or any other place designated by the administrator for the filing of unemployment compensation claims pursuant to Section 31-240 of the General Statutes.

(15) "Interstate Appeal" means an appeal wherein a resident of a foreign state has filed a claim with the Connecticut Employment Security Division for unemployment compensation benefits pursuant to Connecticut law.

(16) "Intrastate Appeal" means an appeal wherein a Connecticut resident has filed a claim with the Connecticut Employment Security Division for unemployment compensation benefits pursuant to Connecticut law.

(17) "Liable State" means any state against which an individual files, through another state, a claim for unemployment compensation benefits.

(18) "Party" means the following parties to an appeal:

(A) the claimant whose unemployment compensation claim is involved;

(B) an individual whose potential claim for unemployment compensation benefits is at issue and who is made a party by the appeals division;

(C) any employer (1) against whom charges may be made or tax liability assessed due to a decision by the Administrator or the Appeals Division and who has appealed that decision or who is made a party by the appeals division; or (2) from whom the claimant's separation is an issue in the appeal;

(D) the Administrator.

(19) "Referee" means an Employment Security Appeals Division Appeals Referee Trainee, Associate Appeals Referee, Principal Appeals Referee, or Chief Appeals Referee.

(20) "Referee Section" means the organizational unit consisting of the Referees and all supporting staff employed for the discharge of the responsibilities assigned Referees pursuant to these regulations and the Connecticut General Statutes.

(21) "Principal Referee" means a Principal Appeals Referee.

(22) "Staff Assistant" means the Staff Assistant to the Board as defined in Section 31-237e(b) of the General Statutes.

(b) As used in these regulations, unless the context clearly indicates otherwise, the present tense includes the past and future tenses, the future tense includes the present, each gender includes the other two genders, the singular includes the plural, the plural includes the singular.

(c) In regard to timeliness, unless otherwise specified in these regulations, the date on which a document is "filed" is the date on which such document is actually received by the office authorized and designated to receive such document, provided that a document filed by facsimile transmission (fax) or internet shall be considered received on a regular work day if the appeals division or administrator's receiving fax machine or computer indicates that it was received no later than 11:59 PM on that day. A fax or internet transmission received on a weekend or legal holiday shall be considered received on the next regular work day. A party filing a document by fax shall retain its fax transmission receipt and the original copy of the document for inspection by the appeals division. A party filing a

document by internet shall produce a hard copy for inspection when requested by the appeals division. Any document filed by fax or internet shall contain a certification pursuant to section 31-237G-10(a) (7) of these regulations describing how and when a copy of the document was provided to all other parties.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-2. Appeals Division

(Statutory reference: 31-237b, 31-237c, 31-237e, 31-237f, 31- 237g, 31-249d)

(a) The Appeals Division controls the administrative appellate system for adjudicating appeals from determinations of the Administrator and consists of the Board of Review and the Referee Section. The Referee Section shall be subject to the Board's administrative direction, supervision and control. Subject to the provisions of Chapter 67 of the Connecticut General Statutes, the Board may appoint such employees in the Appeals Division as it deems necessary to carry out the responsibilities of the Appeals Division provided the Board shall appoint a Staff Assistant to the Board. In the performance of its duties the Appeals Division is autonomous and separate from the Administrator.

(b) The Board shall undertake such investigations as it deems necessary and consistent with the provisions of Chapter 567 of the Connecticut General Statutes. The Board shall consist of three members appointed by the Governor, one of which shall be designated as Chairman of the Board of Review. Such Chairman shall be in the classified service and devote full time to the duties of his office. The other two members appointed to serve during the appointing Governor's term of office shall be a representative of employers and a representative of employees and shall devote full time to the duties of their offices. The members of the Board representing employers and employees shall be selected as representatives based upon previous vocation, employment or affiliation. A member of the Board may be removed by the Governor for cause pursuant to the Connecticut General Statutes. Any vacancy on the Board shall be filled by appointment by the Governor. In the case of a disqualification of a Board member, or at any time a member of the Board is incapacitated to serve, an alternate member appointed by the governor shall serve in place of the board member, provided that the alternate member so appointed shall represent the same interest as the board member in whose place he serves. The board may, at its option, require alternate members to sit with it in the fulfillment of any function of the board. The Staff Assistant shall be qualified, by reason of his training, education and experience, to carry out the duties of the position, which include, but are not limited to, performing legal research for the Board, advising Referees on legal matters relating to procedural and substantive problems of hearings and appeals, assisting the Chairman in preparing legislative amendments to unemployment compensation law pertaining to appellate matters, serving as Acting Chairman of the Board in the Chairman's absence, and other related duties as required.

(c) No person serving as a Referee, Staff Assistant, member of the Board, or legal staff to the board shall appear for or on behalf of any party, other than himself, before any other

Referee or before the Board. No person serving as a Referee, Staff Assistant or, member of the Board, or legal staff to the board shall appear in any court for or on behalf of any party, other than himself or the board, whose matter before the court consists of an appeal or other proceeding which commenced before one of the Referees or before the Board.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-3. Regulations; purpose of regulations

(Statutory reference: 31-237g, 31-238, 31-252)

(a) A copy of these regulations shall be available for purpose of inspection by the public at each Appeals Division and Employment Security office and each law library maintained by the Connecticut Judicial Department or a Connecticut Bar Association.

(b) The Board adopts these regulations for the purpose of providing a procedural framework for the fair and expeditious disposition of appeals before the Appeals Division in accordance with both the Connecticut General Statutes and the procedural promptness standards prescribed by the United States Department of Labor. These regulations shall govern such proceedings unless specifically otherwise provided by state or federal laws or regulations. These regulations formally repeal the obsolete regulations, 31-244-1 through 31-244-17, which governed proceedings before the former Unemployment Compensation Commissioners who were replaced by the Employment Security Appeals Division.

(c) The Board shall from time to time prescribe such forms as the Board deems necessary or useful for proper performance of the Appeals Division's duties.

(Effective June 23, 1986)

Sec. 31-237g-4. Chairman of the Board; Acting Chairman

(Statutory reference: 31-237d, 31-237f)

The Chairman of the Board is the executive head of the Appeals Division. The Chairman may delegate to any person employed in the Appeals Division such authority as the Chairman deems reasonable and proper for the effective administration of the responsibilities of the Appeals Division. In the absence of the Chairman, the Staff Assistant shall automatically serve as Acting Chairman.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-5. Referees; Chief Referee; Principal Referees

(Statutory reference: 31-237i, 31-237j)

(a) The Referee Section shall include such Referees as the Board deems necessary for the prompt processing of appeals and the performance of the duties set forth in these regulations and the Connecticut General Statutes. Each such Referee shall be appointed by the Board and shall be in the classified service of the State. Any vacancy in the office of Referee shall be filled through appointment by the Board. Each Referee shall have statewide jurisdiction and venue. Any Referee may, at any time, serve in place of any other Referee with regard to any appeal, provided the succeeding Referee shall review the entire file and

hearing record of such appeal, including such records prepared by any preceding Referee, before issuing a decision addressing the merits of such appeal. In any case before the Referee Section, the Chief Referee, upon his own initiative or the request of any party, may direct that the appeal be heard and the decision issued by a panel of Referees. In any case before the Board the Board may delegate to a Referee the taking or hearing of evidence or such other matters as set forth in these regulations. A Referee may provide assistance and advice to the Board or any of its members in the discharge of their duties, except that no Referee shall provide advice in any matter before the Board in which that Referee was previously involved at the first level of appeal.

(b) The Chairman of the Board shall designate from among the Referees a Chief Referee. The Chief Referee shall be in the classified service. The Chief Referee shall be the administrative head of the Referee Section and may delegate to any Referee or any person employed in the Referee Section such authority as the Chief Referee deems reasonable and proper for the effective administration of his duties.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-6. Decisions of the Appeals Division; electronic index of Board decisions

(Statutory reference: 31-238, 31-249f, 31-252, 1-15)

(a) Final decisions of the Referees and the principles of law declared in their support shall be binding upon the Administrator and shall further be persuasive authority in subsequent Referee proceedings. Final decisions of the Board shall be binding as precedent in all subsequent proceedings involving similar questions.

(b) The Board shall provide the public electronic access to its decisions at each employment security and appeals division office through an indexing system that provides text retrieval. Such system shall enable the user to identify, read, and copy board decisions based upon the name of the parties; date of decision; citation to statutes, regulations, court cases, or prior board decisions; subject matter; and whether the decisions have been identified by the board as precedential.

(c) Any hard copy indexes, manuals, outlines or similar compilations of board decisions that the board maintains will be made available to the public at all appeals division and employment security offices and all libraries maintained by the Connecticut Judicial Department or the Connecticut Bar Association.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-7. Appeals Division records

(Statutory reference: 1-18d, 4-18d, 1-19(b) (2), 31-244a, 31-254)

(a) The Appeals Division shall maintain written file records summarizing all material requests, reports, notifications and decisions which occur pursuant to these regulations in an oral manner between the Appeals Division and any person outside the Appeals Division concerning any appeal before the Appeals Division, provided that any such person initiating such communication with the Appeals Division identifies himself or herself, the appeal

name and number in question, and his or her relationship to such appeal. All oral requests which, pursuant to these regulations, are considered by the Appeals Division, shall be promptly decided and the person making such request shall be promptly notified of such decision. The file record summarizing all such oral communication shall indicate: the date and time such communication occurred; the name and case number of the appeal involved; the identity of the Appeals Division staff member involved; the name, telephone number, title and relationship to the appeal of the other person involved in such communication; the report, request, notification or decision in such communication; the response, if any, to such report, request, notification or decision. Except for communications dealing with procedural or scheduling matters, the Appeals Division shall not engage in any ex parte oral communication with any person outside the Appeals Division concerning the substantive merits of any particular appeal pending before the Appeals Division unless all parties either are permitted to simultaneously participate in such communication, or have waived their right to so participate. The Appeals Division shall document for the file record the attempt of any person to engage in such an ex parte oral communication on the substantive merits of any such appeal.

(b) Each document or item of written correspondence concerning an appeal before the Appeals Division shall immediately be: (1) date-stamped on the front page upon receipt by the Appeals Division or Employment Security office involved to indicate the date when, and the office where, such document or correspondence was actually received, (2) forwarded to the Appeals Division office involved, and (3) included in the appropriate appeal file upon receipt by such Appeals Division office. The written information, exhibits, data, and other documentary file records of any appeal before the Appeals Division shall, subject to the provisions of subsection (c) and (d) of this section and except for those items exempt from disclosure pursuant to the Freedom of Information Act, be available for inspection upon the premises of the Appeals Division office containing such material during regular Appeals Division hours. At any time subsequent to the decision on an appeal becoming final, any party to such an appeal, or the attorney or authorized agent for such party, may in writing request the return of any original documentary exhibits filed with the Appeals Division concerning such appeal and, subject to the provisions of subsection (c) hereunder, the Appeals Division shall return such original documents to the requesting party after insuring that duplicates of such documents are maintained in the file record. To facilitate a timely response, each such written request should be prepared in accordance with Section 31-237g-7(j) of these regulations, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be acceptable.

(c) Except as provided in Section 31-237g-6(c) of these regulations, and subsection (d) of this provision hereinafter set forth, all written information, exhibits, data and other documentary file records of any appeal before the Appeals Division may be destroyed by the Appeals Division if the decision upon such appeal has become final, the appeal has been on file with the Appeals Division for no less than three years, and the destruction is done in accordance with the applicable federal and state records retention statutes.

(d) The Appeals Division may, six months after the hearing on a case that has not been appealed to the board, erase the official tape hearing record and reuse such tape cassette cartridge for new appeal hearings, provided that such erasure is done in compliance with the applicable federal and state records retention statutes and a cassette tape duplicate of such official tape hearing record of any hearing held before the Appeals Division shall be promptly prepared and furnished to any person who, prior to such erasure, files with the Board a written request for such a cassette tape duplicate. To facilitate a timely response, each such written request should be prepared in accordance with Section 31-237g-7(j) of these regulations, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be acceptable.

(e) Copies of any decision subject to inspection pursuant to Sections 31-237g-6(b) and 31-237g-6(c) of these regulations shall be promptly furnished by the Board to any person who files with the Board a written request for such decision copies. To facilitate a timely response each such written request should be (1) prepared in accordance with Section 31-237g-7(j) of these regulations; (2) specifically identify each such decision by name, case number and date of issuance, and (3) contain an agreement to pay the duplication charges authorized in subsection (i) below, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be complied with. Requests for copies of nonexempt data contained in the appeals division's computer storage system will be honored in accordance with Section 1-19A(a) of the General Statutes.

(f) Copies of any documents subject to inspection pursuant to subsection (b) above shall be promptly furnished by such Appeals Division office to any person who files with such office a written request for such document copies. To facilitate a timely response each such written request should (1) be prepared in accordance with Section 31-237g-7(j) of these regulations, (2) specifically identify each such document, and (3) contain an agreement to pay the duplication charges authorized in subsection (i) below, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be complied with.

(g) The Appeals Division may prepare or cause to be prepared by a commercial transcription service and furnish to any party, or the attorney or authorized agent for such party, a typed transcript of the official hearing record of any hearing held before the Appeals Division if an appeal is taken from the decision of the Referee or the Board and the Referee or the Board determines, upon its own motion or upon a written request filed during the pendency of such appeal by a party or the attorney or authorized agent for such party, that the ends of justice warrant and the administrative capabilities and obligations of the Appeals Division at that time feasibly permit the preparation and furnishing of such a transcript. Any such written request should (1) be prepared in accordance with Section 31-237g-7(j) of these regulations, (2) explain the good cause alleged to support the requirement of preparing and furnishing such a transcript, and (3) contain the requesting party's agreement to pay the actual cost of preparing the transcript. The cost for the preparation and furnishing of any transcript shall be set and paid in accordance with subsection (i) below.

(h) The request, or inability, to (1) inspect the Appeals Division file pursuant to subsection (b) above, (2) obtain a cassette tape duplicate of the official cassette tape hearing record pursuant to subsection (d) above, (3) obtain duplicate copies of decisions pursuant to subsection (e) above, (4) obtain duplicate copies of documentary file records pursuant to subsection (f) above, or obtain a transcript pursuant to subsection (g) above, shall not stay or toll any time limitations relating to proceedings upon an appeal before the Appeals Division. However, a party, or the attorney or authorized agent for such party, may, pursuant to these regulations, request a postponement of proceedings or a limited extension of time in which to supply, based upon review of such requested file records, hearing records, decisions or transcript, further argument or information supplementing any appeal, motion, request or other correspondence which is timely filed concerning such appeal.

(i) Duplication charges for plain copies of decisions subject to inspection pursuant to Sections 31-237g-6(b) and (c) of these regulations or any documentary file record subject to inspection pursuant to subsection (b) above shall be set and paid in accordance with the appropriate provisions of the Connecticut General Statutes. The charge for preparing and furnishing duplicates of the official cassette tape hearing record shall be five dollars ($5.00) per cassette tape cartridge, provided that if more than one cassette cartridge is needed to cover the hearing(s) involved the total charge for the duplication of such tapes shall not exceed ten dollars ($10.00). Charges for the preparation of transcripts shall be the actual cost of preparing each such transcript. The party, attorney or authorized agent who pursuant to this section, files the request for a duplicate or transcript shall be responsible for payment to the Appeals Division of all duplication charges arising consequent to such request. Charges for copies of data maintained in the appeals division's computer storage system shall be in accordance with the applicable provisions of the General Statutes. The Appeals Division may require advance payment of any duplication charges or transcript preparation charges estimated to be ten dollars or more before preparing and furnishing such duplications or transcripts. Any provision of this subsection or the subsections above to the contrary notwithstanding, if the Appeals Division determines that the party requesting such decision or file record copies, official cassette tape duplicates or transcript is an indigent individual, or that waiver of such duplication charges would benefit the general welfare, then the Appeals Division may waive the duplication charges, or any part thereof.

(j) To facilitate a timely response, each request for Appeals Division records filed pursuant to this section should (1) be on a separate sheet or sheets of paper independent from other documents; (2) be typed or legibly printed; (3) be adequately titled at the top center of the document's first page so as to clearly reveal its intended purpose; (4) contain sufficient identifying information to describe the file involved including the case number; the claimant's name, address, zip code and social security number, if applicable; the employer's name, address, zip code and employment security registration number, if applicable; (5) show the name, address and identity (for example: "claimant," "employer," or "Administrator") of the party filing such document; (6) clearly specify the record or records being requested; (7) be signed by the party filing such document or the attorney or

authorized agent for such party, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be acceptable insofar as form is concerned.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-8. Administrator as a party

(Statutory reference: 31-237h, 31-249c)

The Administrator shall be deemed a party to any proceeding before the Appeals Division. The Appeals Division shall have access to all Employment Security records necessary for the performance of the Appeals Division's duties pursuant to these regulations and the Connecticut General Statutes. Copies of all documents and correspondence which the Administrator is entitled to concerning any proceeding before the Appeals Division shall, unless otherwise specified, be mailed or delivered to: "Administrator's Appeals Representative, Connecticut Department of Labor, Office of Program Policy, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109."

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-9. Responsibilities of parties; notification upon change of address or name

(Statutory reference: §§ 31-237h, 21-249c)

It is the responsibility of each party to an appeal before the Appeals Division to keep the specific Appeals Division office involved notified of all changes of such party's name or address, and in the event that such party has, or in the exercise of ordinary prudence should have, reason to believe that it will be difficult for such party to timely receive any correspondence mailed to such party's address to either (1) make private arrangements to insure that such party receives immediate notification as to the content of such correspondence upon the arrival of same at the party's address, or (2) make adequate arrangements with, and acceptable to, the specific Appeals Division office involved, to enable such office to provide the party with timely notice, by telephone or otherwise, as to any aspect of the appeal proceedings.

(Effective January 1, 1988)

Sec. 31-237g-10. Responsibilities of parties; form of documents submitted to the Appeals Division

(a) Each motion, request or other written document filed with the Appeals Division pursuant to these regulations should, unless otherwise specified:

(1) be on a separate sheet or sheets of paper independent from other documents;

(2) be typed or legibly printed;

(3) be adequately titled at the top center of the document's first page so as to clearly reveal its intended purpose pursuant to these regulations;

(4) contain sufficient identifying information to describe the file involved including the

case number; the claimant's name, address, zip code and social security number, if applicable; the employer's name, address, zip code and employment security registration number, if applicable;

(5) show the name and identity (for example: "claimant," "employer," or "Administrator") of the party filing such document;

(6) be signed by the party filing such document or the attorney or authorized agent for such party;

(7) describe on the last page when and how a copy of such document was provided to each other party, plus the attorney and authorized agent of record for each other such party, and, subject to the provisions of subsection (f) of this section, a copy of such document should be delivered or mailed postage prepaid to each other such party, attorney and authorized agent, including the Administrator, no later than the date that such document was filed with the Appeals Division. In the event, however, that any such document does not contain such a description of the manner in which a copy of such document was provided to the other parties and the Appeals Division determines that such document supplements or affects the case in a material way, the Appeals Division shall immediately provide a copy of such document to each other party and the attorney and authorized agent of record for each other such party. An appeal to the Referee, the Board or Superior Court need not contain such a description, and a copy of such appeal need not be delivered or mailed to each other party, attorney and authorized agent.

(b) Any document filed which is so incomplete or illegible as to render it impossible for the Appeals Division to determine the identity of the party submitting same shall be void and shall not be acted upon by the Appeals Division. Such correspondence shall be maintained by the Appeals Division in a void correspondence file.

(c) Subject to the provisions of Section 31-237g-34(c) and 31-237-49(c) of these regulations, any document filed from which the Appeals Division can determine the identity of the party submitting same but which is otherwise so incomplete, illegible, vague, unsigned or inadequately titled that the Appeals Division is unsure as to the purpose or legitimacy of such document shall, except as otherwise provided in these regulations, be treated and processed as the Appeals Division reasonably deems proper including, but not limited to, request by the Appeals Division for clarification and/or personal signature or other authorization and the setting of reasonable time limits for response to such requests.

(d) Any appeal, motion, request, or other document filed with the Appeals Division which cites any judicial or administrative decision or opinion for which a citation is not included to the Connecticut Reports, Connecticut Supplement, Connecticut Appellate Reports, Connecticut Law Journal, Connecticut Law Tribune, Commerce Clearing House Unemployment Insurance Reporter, Federal Reporter, Federal Supplement, The West Publishing Company Regional Reporters, United States Reports, Supreme Court Reporter or the identifying information provided for such decision or opinion in the Manual of Precedential Decisions or Index of Board Decisions prepared by the Board pursuant to Section 31-237g-6(b) and (c) of these regulations, shall include a complete copy of such

decision or opinion with such document. The Appeals Division may refuse to consider or address any such decision or opinion for which such citation or complete copy is not so provided.

(e) It is the responsibility of each party, attorney and authorized agent in any appeal before the Appeals Division to immediately provide the specific Appeals Division office involved with written notification, including correction, if any identifying information listed on any correspondence issued by the Administrator or the Appeals Division concerning such party, attorney or authorized agent is inaccurate.

(f) Other provisions of these regulations to the contrary notwithstanding, the Appeals Division may, if it deems it necessary or advisable to protect the rights of all parties involved, in certain instances require that copies of certain documents filed with the Appeals Division be delivered or mailed via postage prepaid certified mail return receipt requested to the Appeals Division and each other party, attorney and authorized agent of record no later than the date that such document was filed with the Appeals Division.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-11. Representation by attorney or agent; authorization; notice; fees; amicus curiae

(Statutory reference: 31-272(b) (2))

(a) Any party to a proceeding before the Appeals Division may be represented by an attorney or an authorized agent, or both, provided that at any hearing before the Appeals Division, the Referee or the Chairman, as the case may be, may limit oral participation during such hearing to only one such representative of each party designated by that party. Any individual, corporation, partnership or other association may, subject to the provisions of subsection (e) hereinafter set forth, serve as a party's authorized agent provided that any authorized agent that represents a party for a fee shall comply with sections 31-272-1 to 31-272-18 of the Regulations of Connecticut State Agencies. The Appeals Division may refuse to provide a second hearing to any party who, without good cause, fails to obtain representation for the original hearing and thereafter alleges that a second hearing is necessary to allow such party the benefit of such representation.

(b) If the file record of any proceeding before the Appeals Division indicates that any party has been represented in such proceeding by an attorney or an authorized agent, or both, such representation shall be considered to be of record for the Appeals Division's purposes concerning such proceeding unless and until a written withdrawal of such representation signed by such party is filed with the specific Appeals Division office involved or a new representative is substituted. Except as otherwise herein provided, the Appeals Division may refuse to accept any document or other communication, written or oral, from any individual or entity on behalf of any party unless such communication to the Appeals Division is preceded or accompanied by a written statement personally signed by such party designating such individual or entity as authorized agent of record for such named party with regard to such proceedings before the Appeals Division. A written statement

signed by an attorney announcing representation of a named party with regard to specifically identified proceedings before the Appeals Division shall constitute sufficient notification to the Appeals Division of such attorney's status as representative of record for that party during such proceedings.

(c) Whenever the file record of any proceeding before the Appeals Division indicates that a party is represented by an attorney or an authorized agent, or both, the Appeals Division shall mail to each such attorney and agent a copy of all correspondence, notices or decisions mailed to such party simultaneous with the mailing of such materials to the party. Notice to such attorney or agent shall constitute effective notice to such party.

(d) The cost of representation permitted by this section shall be the expense of the party obtaining such representation but no attorney or authorized agent shall charge or receive for representation of a claimant in proceedings before the Appeals Division more than the amount approved for same by the Referee or the Board, as the case may be, before whom the proceedings took place, provided the Appeals Division shall not be obligated to set such a specific approved fee for claimant representation unless: (1) during proceedings upon the appeal or at any time prior to the decision on the appeal becoming final, the claimant or the representative on the hearing record at a hearing before the Referee or by way of a written request filed with the Appeals Division pursuant to the guidelines set forth in Section 31-237g-10(a) of these regulations, requests the Appeals Division to set an approved fee; or (2) during proceedings upon the appeal or at any time prior to the decision becoming final, the Referee or the Board, as the case may be, on its own initiative, specifically includes the issue of an approved claimant representation fee among the matters to be decided concerning such appeal; or (3) within thirty (30) days following a claimant's receipt of the written charged expense for such representation, the claimant, in accordance with Section 31-237g-10(a) of these regulations, files with the Referee or the Board, as the case may be, a written objection to such charged expense. In the event that the claimant representation in question occurred solely before a Referee, the Referee shall possess initial jurisdiction over the issue of fees, but if such claimant representation occurred before both a Referee and the Board, then the Board shall possess jurisdiction over the entire issue of claimant representation fees. If the issue of an approvable claimant representation fee is raised and fully heard at an evidentiary hearing upon the appeal, the Appeals Division decision upon the appeal shall set an approved fee. If the issue of an approvable claimant representation fee is raised by the filing of a written objection to charged claimant representation fees or the filing of a written request for the setting of an approved fee and not otherwise covered at a hearing, the Referee or the Board, as the case may be, shall mail to both the claimant and the claimant representative involved notice of such matter and both the claimant and the representative shall have the right, and such notice shall advise them of the right, to file with such Referee or the Board, as the case may be, within ten (10) days of the mailing date of such notice, written argument on such matter, request for an evidentiary hearing concerning such matter and, in the case of such a matter before the Board, request for decision of such matter by the full, three-member Board. Following the expiration of such ten day time limit the

Referee or the Board, as the case may be, may, on its own initiative or in response to a timely request therefor, schedule an evidentiary hearing upon such matter and, in such event, the hearing and subsequent decision on such fee issue shall occur pursuant to these regulations. If a hearing is not granted, the Referee or the Board shall, following the expiration of said ten day time limit, review such matter on the record and, pursuant to these regulations, issue a decision upon the matter which shall address any such written argument and requests timely filed with regard to same. In determining approvable fees for claimant representation, consideration will be given to several factors including, but not limited to, any initial fee arrangement mutually agreed to by the claimant and the representative, the time necessarily expended by the representative, the complexity and difficulty of the facts and issues involved, the skill of the service provided and the results obtained, in comparison to, and with special regard for, the amount of benefits involved, the remedial purposes of unemployment compensation and the financial resources of the claimant concerned. Except in extraordinary cases, an approvable fee may not exceed twenty percent of the benefits potentially payable to the claimant as a result of the claim under adjudication plus reasonable and necessary costs. In separation cases, the benefits potentially payable are the greater of either the sum of the claimant's weekly benefit amount multiplied by the average weekly duration of unemployment for the previous year as determined by the department of labor or the total benefits actually collected at the time of the request to the board to determine the amount of the attorney's fee. The time limitations and procedures specifically provided in this subsection for objections to charged claimant representation fees shall not affect, stay or toll the time limitations otherwise provided in these regulations for the disposition of appeals by the Appeals Division. The Appeals Division's decision on claimant representation fees may be appealed in accordance with the same time limits and procedures set forth in these regulations for the adjudication of appeals.

(e) Representation by an attorney or authorized agent shall not relieve any party of the responsibility to present at a duly scheduled hearing testimony from all individuals with actual personal knowledge of the facts involved. A represented party may be deemed to be bound by the representation afforded that party by the representative during proceedings before the Appeals Division.

(f) In any proceeding wherein the Appeals Division determines that the eventual decision will potentially be of significant precedential value, the Appeals Division may, upon its own motion or upon written request, permit any person, organization or entity which the Appeals Division reasonably determines represents a constituency which would be significantly affected by such decision or which has specialized knowledge or expertise on the subject involved, to serve as an amicus curiae for purposes of advocating the interests of such constituency or availing the Appeals Division of its knowledge on the subject during such proceeding for such duration and under such terms as the Appeals Division may reasonably provide. Each such request should be filed by means of a typed or legibly printed document which should (1) be clearly entitled at the top center "Request for Leave to Intervene as Amicus Curiae"; (2) describe why the requesting person, organization or entity would be

qualified to serve as such an amicus curiae, the constituency if any, which would be represented and, if applicable, why such constituency would not otherwise be adequately represented unless such request was granted; (3) describe why the decision eventually issued in such proceeding will allegedly be of significant precedential value and (4) otherwise follow the guidelines set forth in Section 31-237g-10(a) of these regulations. If the Appeals Division grants such a request, notice of that decision will be issued in accordance with Section 31-327g-13 of these regulations and thereafter during the pendency of its authorized involvement such amicus curiae shall be entitled to the same notice due each party to such proceeding pursuant to these regulations including, but not limited to, Section 31-237g-10(a) and 31-237g-13. However, unless an amicus curiae becomes a representative of record for a party actually aggrieved by the eventual decision, such amicus curiae is without standing to exercise appeal rights with regard to such decision.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-12. Formal pleadings not permitted

(Statutory reference: 31-244a)

Except as provided in these regulations, formal pleadings or discovery proceedings such as allowed in other civil proceedings shall not be permitted in appeal proceedings before the Appeals Division.

(Effective June 23, 1986)

Sec. 31-237g-13. Notices from the Appeals Division

(a) A copy of each written decision or notice issued by the Appeals Division pursuant to these regulations shall, unless otherwise specified:

(1) be typed;

(2) be adequately titled at the top center of the document's first page so as to clearly reveal its intended purpose pursuant to these regulations;

(3) list at the top center of the document's first page the address and telephone number of the specific Appeals Division office which issued the document;

(4) include the following identifying information: the claimant's name, address and social security number, if applicable; the employer's name, address and registration number, if applicable; the names and addresses of all attorneys and authorized agents of record with an indication of the party so represented; the case number and the date that such decision or notice was mailed;

(5) list the name and authority of the individual issuing such decision or notice;

(6) with regard to decisions, clearly state the nature of the decision and contain an announcement of the appeal rights, if any, pertaining to such decision;

(7) be mailed by the Appeals Division via first class mail postage prepaid simultaneously to all parties, attorneys, and authorized agents of record promptly following its preparation, provided that, upon request, any party, attorney or authorized agent may obtain any such copy at the office of the Appeals Division which issued the decision or notice on the same

date that such copies are otherwise mailed to all parties, attorneys and authorized agents and in such instance the person receiving such hand-delivered copy shall sign a receipt for such delivery which shall become a part of the file record.

(Effective January 1, 1988; Amended October 27, 1997)

Article II

Appeals to the Referee

Sec. 31-237g-14. Appeal to the Referee; resources

(Statutory reference: 31-238, 31-241, 31-249c, 31-244a)

The Administrator shall provide, at each Employment Security Office, a copy of these regulations; electronic access to board decisions through an indexing system; any hard copy indexes, manuals, outlines or similar compilations of board decisions that the board maintains; and a sufficient supply of forms prescribed by the Board for the filing of appeals for use by parties desirous of appealing decisions of the Administrator or the Appeals Division.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-15. Appeal to the Referee; time and place for filing; jurisdiction of Referees

(Statutory reference: Secs. 31-241 and 31-237j)

(a) Except as otherwise provided by law, the Administrator's decision shall be final unless a party aggrieved by the decision files, within twenty-one days after the date such decision was mailed to such party's last-known address, an appeal to the Referee with an office of Employment Security, the Appeals Division or any similar employment security agency of any other state in which such party is located at the time of filing. The appeal rights of an employer shall be limited to the first notice such employer is given in connection with a claim which sets forth his appeal rights. Any appeal may be filed in person, by faxscimile transmission (fax), by internet or by mail but to be acceptable as a timely filed appeal it must actually be received at such office no later than the twenty-first (21) calendar day following the date on which the Administrator's determination was mailed, must bear a legible United States postal service postmark which indicates that within such twenty-one day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in Section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If said twenty-first (21) day falls on a day when the office in which the appeal was filed was not open for business, then such last day shall be extended to the next business day of such office. It is generally advisable, to the extent that it can be accomplished within the allotted twenty-one day period, to file such appeal with the specific Employment Security office which rendered the decision. Any appeal filed after the twenty-one day period has expired may be considered

to be timely filed if the filing party shows good cause for the late filing.

(b) For purposes of this section, a party has good cause for failing to file an appeal within twenty-one (21) calendar days of the issuance of the Administrator's determination if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the Referee shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the Appeals Division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing an appeal once the reason for the late filing no longer existed:

(ix) Where there is substantial prejudice to an adverse party which prevents such party from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its appeal.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause the Referee shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the appeal is excessively late, and whether the party otherwise acted with due diligence.

(c) The Referees shall have jurisdiction over appeals from all determinations made pursuant to chapter 567 of the Connecticut General Statutes, including appeals from determinations regarding employer tax liability, except those involving only a determination of the amount of contributions due made pursuant to Section 31-270 of the General Statutes, or pursuant to directives of the United States of America and the Secretary of Labor of the United States. Unless otherwise specifically provided by statute or regulation, the appeal period for all such determinations shall be as set forth in subsection (a) and (b) of this section.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-16. Processing of appeal to the Referee

(Statutory reference: 31-237h, 31-238, 31-249c, 31-244a)

(a) Each appeal to the Referee from a decision of the Administrator shall be filed by the use, pursuant to the instructions contained thereon, of the form prescribed for such purpose and available at each Employment Security office or by means of a document which clearly indicates a desire for appellate review of such decision and which should be prepared in

substantial compliance with the guidelines set forth in Section 31-237g-10(a) of these regulations.

(b) Immediately upon receipt of an appeal to the Referee the Employment Security office involved shall:

(1) stamp the front page of the appeal, and the front page of all supplemental documentation accompanying the appeal, to indicate the date and the office where such appeal was filed;

(2) if necessary, forward such appeal, and all documentation accompanying the appeal, to the Employment Security office maintaining the file records concerning the Administrator's decision involved.

(c) Immediately upon receipt of an appeal to the Referee at the Employment Security office maintaining the file records concerning the Administrator's decision involved, such Employment Security office shall provide to such Appeals Division office as the Appeals Division shall direct to be the appropriate office for prompt processing of such appeal: the original appeal together with all the information, documentation and records which the Appeals Division reasonably requires for the prompt and proper disposition of the appeal by the Appeals Division. The Employment Security office involved shall maintain duplicate copies of all such documentary file records provided to the Appeals Division.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-17. Scheduling of hearing; intrastate; interstate; telephone hearing; notice of hearing

(Statutory reference: 31-237j, 31-242, 31-244a)

(a) Upon receipt of an intrastate appeal to the Referee Section from a determination of the Administrator, the Referee Section shall assign the appeal a case number and promptly schedule a hearing upon such appeal at a location and in a manner that is reasonably convenient for the parties. In the scheduling of such hearings primary consideration shall be given to the goal of prompt disposition of appeals, the normal hours, days of the week and locations established for conducting such hearings, the proximity of the hearing location to the Employment Security office where the initial claim for benefits was filed and the administrative limitations and needs of the Referee Section, but hearings may be scheduled at such times, dates, places and in such manner as the Referee Section deems necessary to give each party a reasonable opportunity for a fair hearing. To the extent practicable and reasonable under the circumstances of each intrastate appeal, in-person hearings, whereby all parties and witnesses are expected to be physically present at the same hearing location, shall be the preferred manner of scheduling and conducting intrastate hearings, but the Appeals Division may, on its own initiative or upon the timely request of a party made prior to the hearing which shows good cause therefor, make arrangements for conducting a telephone hearing on an intrastate appeal whereby some or all of the parties and witnesses testify by telephone, subject to the availability of sufficient telephone lines at the hearing location. If the referee determines that the ends of justice so require, the referee, during the

course of the hearing, may take by telephone the testimony of any witness not physically present at the hearing. For purposes of this section, good cause includes, but is not limited to:

(i) Excessive distance to the hearing location.

(ii) Physical disability.

(iii) Transportation difficulties.

(iv) Security concerns.

(v) The need for multiple witnesses, especially where the requesting party would be unduly burdened or where a particular witness is only needed for a discrete issue.

(vi) Testimony will be taken only on a procedural issue or issue of marginal relevance.

(vii) A party has previously suffered extreme inconvenience in connection with the scheduling of the hearing.

In any circumstance in which a party would be entitled to a postponement, the appeals division shall not deny the party the right to participate by telephone unless it offers the party a postponement.

(b) Upon receipt of an interstate appeal to the Referee Section from a determination of the Administrator, the Referee Section shall promptly schedule a telephone hearing upon such appeal whereby all parties are expected to participate simultaneously in the hearing by telephone. To the extent practicable and reasonable under the circumstances of each interstate appeal, telephone hearings shall be the preferred manner of scheduling and conducting interstate appeal hearings provided that any party to the appeal or its attorney or authorized agent may, after providing notice to the office of the appeals division which scheduled the appeal, appear in person at the hearing on the appeal. The notice of any telephone hearing shall inform the parties of their right to appear in person.

(c) Written notice of the day, date, time, manner and location of each hearing scheduled before a Referee shall be mailed to each party and the attorney and authorized agent of record for such party not less than five (5) days prior to the scheduled hearing date provided the parties may waive such notice and agree to a shorter period of time in advance of hearing for receiving such notice. Each such written notice shall:

(1) be prepared in accordance with Section 31-237g-13(a) of these regulations;

(2) list the telephone number of the Appeals Division office which issued the notice;

(3) contain, or be accompanied by, a written statement which summarizes the basic rights and responsibilities of the parties pursuant to these regulations concerning such hearing;

(4) provide notice of the issues which may be covered at such hearing and the sections of the Connecticut General Statutes or other law relating to such issues including a statement as to the legal authority and jurisdiction under which the hearing is to be held;

(5) in the case of a telephone hearing, be accompanied by clearly identified copies of all pertinent Appeals Division records concerning such appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-18. Rescheduling; postponements

(a) Due to existing requirements for the prompt disposition of unemployment compensation appeals, a hearing scheduled before a Referee may, for good cause, be rescheduled by the Appeals Division to another date, time or location only upon the initiative of the Appeals Division or upon a request from a party, or the attorney or authorized agent for such party, which reveals good cause for such request. Such a request need not be in writing, but shall be promptly made as far as possible in advance of the scheduled hearing and describe the good cause alleged for the request. Such a request should be made to the Appeals Division office which issued the notice of hearing. The Appeals Division may require that the reasons given in oral rescheduling requests be subsequently confirmed in writing or sworn affidavit by the party, attorney, or authorized agent who made the request. The appeals division may deny any request that is not based upon good cause or that is not timely made. Each authorized agent that represents parties for a fee shall comply with Section 31-272-4 of the Regulations of Connecticut State Agencies in making such a request. The Appeals Division shall, with regard to each such rescheduling request, promptly decide the request and record the following in the appeal file: (1) the person making such request; (2) the party on whose behalf the request was made; (3) the date and time such request was received; (4) the good cause alleged for such request; (5) the decision upon such request and the reasons therefor; (6) the manner in which such decision was conveyed to the requesting party; and (7) the name of the Appeals Division staff member involved with such communication. The Appeals Division's decision denying such a rescheduling request need not otherwise be in writing.

(b) Upon rescheduling any hearing, the Appeals Division shall:

(1) promptly make a reasonable effort to orally notify each party, attorney and authorized agent of record as to the rescheduling if it is reasonable to assume that mailed written notice of such rescheduling would not timely arrive, and record in the file record the date and time of such notification and the person to whom such notification was conveyed; and

(2) confirm such rescheduling with a written notice of rescheduling which shall be sent to all parties and list the following information: the party who made the request, the good cause alleged for the request, and, if known, the new day, date, time and place for the rescheduled hearing. If such notice indicates the new day, date, time and place of such hearing, such notice shall be in lieu of reissued notice otherwise required by Section 31-236g-17 of these regulations.

(c) Any party aggrieved by the Referee's decision on a rescheduling request may petition for review of such decision but only as a part of any subsequent petition which addresses the Referee's eventual decision on the appeal by way of either an appeal to the Board or a motion to the Referee to reopen, vacate, set aside or modify. However, any party which objects to a Referee's decision on a rescheduling request should, at the earliest opportunity, provide such objection in writing to the Appeals Division office involved and/or state such objection on the record at the hearing held subsequent to such request.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-19. Stipulations; official notice; consolidated proceedings

(a) The parties to a proceeding before a Referee may stipulate to agreement upon facts or procedures and the Referee may accept such stipulations if the Referee determines such stipulations to be consistent with the actual facts, the law and these regulations.

(b) The Referee may take official notice of judicially cognizable facts and generally recognized, technical, or scientific facts within the Referee's specialized knowledge. Any facts officially noticed shall be specifically identified as such in the Referee's decision. Any party who (1) is aggrieved by a Referee's decision which incorporates a fact which was officially noticed by the Referee but not specifically addressed at the Referee's hearing and (2) disputes such fact officially noticed may, pursuant to Sections 31-237g-34 and 31-237g-35 of these regulations, file a Motion to Reopen such case for purposes of scheduling a further evidentiary hearing on such case. If the Motion is timely filed and specifically alleges such conditions, the Referee shall grant such Motion.

(c) For good cause, any number of proceedings before the Referee may, at the initiative of the Referee or at the request of a party, be consolidated for hearing, review or decision provided that the referee notifies the parties of his intention to consolidate and the reasons therefor and provides the parties a reasonable opportunity to object. A referee's decision to consolidate is not separately appealable but is subject to a motion to reopen or may be made an additional ground for appeal from the referee's final decision on the merits. For purposes of this subsection, good cause includes but is not limited to:

(1) the facts and circumstances of each case are substantially similar, (2) the legal issues are related (3) such consolidation will not unduly complicate the issues involved, (4) consolidation will aid the referee in creating a more complete record or resolving complex or significant issues of law, and (5) no substantial right of any party will be significantly prejudiced.

(d) The board may request that a party sign a written stipulation which (1) waives such party's claim to an individual and separate hearing, review and decision; (2) appoints one or more individuals or entities to serve as representatives of such party for purposes of any hearing or review held; and (3) binds such party by the representation so afforded during such proceedings.

Any stipulation for consolidation signed by a claimant at the time of his filing a claim for benefits or subsequent thereto which recites that the stipulation shall remain in effect during the pendency of any appeal before the Referee or Board shall be valid.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-20. Request for remand by Administrator

(a) After an appeal to the Referee is filed, the Referee may, upon the written request of the Administrator, remand the appeal to the Administrator for purposes of reconsideration by the Administrator provided the request is prepared in accordance with Section 31-237g-10(a) of these regulations and the request is received by the Appeals Division office involved prior to the mailing of the Referee's decision on such appeal. Such a remand may issue

without any hearing before the Referee. The general provisions of Section 31-237g-34(a) of these regulations to the contrary notwithstanding, a Referee's decision on a request for remand by the Administrator is not subject to appeal but may be subject to a motion to reopen.

(b) A Referee's decision remanding an appeal pursuant to subsection (a) above shall be prepared and delivered in accordance with Section 31-237g-13 of these regulations and shall include a reference to the request approved, but need not otherwise comply with Section 31-237g-33(b) of these regulations. In granting such a request for remand, the Referee may retain jurisdiction of the appeal. If the Referee retains jurisdiction, upon the issuance of a new determination by the Administrator, the Referee shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing or modifying the Administrator's determination, provided that the Referee shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Referee does not retain jurisdiction, the Administrator's new determination shall inform the aggrieved party of its right to file a new appeal from the determination.

(c) A Referee's decision denying a request for remand by the Administrator shall state the reason for such denial and be either separately prepared and delivered in accordance with Section 31-237g-13 (a) or incorporated in the Referee's decision on the appeal.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-21. Subpoenas

(Statutory reference: 31-245, 31-246, 31-247)

(a) The Referee may, upon his own initiative or at the request of a party filed pursuant to this section, issue subpoenas to compel the attendance of witnesses at any hearing before the Referee for the purpose of providing testimony or physical evidence, or both, if the Referee determines that his issuance of such subpoena is necessary to fairly adjudicate the appeal. Service of such subpoenas shall be made in accordance with Connecticut law and, unless otherwise arranged with the requesting party, the Appeals Division shall take responsibility for service of each subpoena issued by a Referee.

(b) Any party may request the Referee to issue a subpoena to compel the attendance at the Referee's hearing of any proposed witness for the purpose of providing testimony or physical evidence, or both. Such a request need not be in writing, but shall be promptly made as far as possible in advance of the scheduled hearing. In the absence of a properly issued subpoena, attendance at a Referee's hearing by any party or other person is not mandatory. Therefore it is the responsibility of each party which intends or desires to examine or cross-examine any other party or person to request the issuance of a subpoena to insure the attendance of such other party or person at the Referee's hearing. The Appeals Division may require that the reasons given in oral subpoena requests be subsequently confirmed in writing or sworn affidavit by the party, attorney, or authorized agent who made the request. Each request should:

(1) reveal the name of each such witness and the location, or locations, where each

witness can be served;

(2) identify and describe all physical evidence requested and indicate why it is believed that the witness in question has control of such material;

(3) explain why each such witness and item of physical evidence is necessary to the Referee's adjudication of the appeal;

(4) indicate why such witness or physical evidence will be unavailable unless the requested subpoena is issued by the Referee.

(c) The Referee shall promptly decide each such subpoena request and notify the requesting party of the decision. Notice of such decision need not be in writing, but such notification shall be recorded in the appeal file. The Appeals Referee may discuss such request with the opposing party or the proposed witness, or both, for purposes of obtaining the attendance of such proposed witness at the hearing by stipulation in lieu of subpoena. The Referee may refuse to grant a request for issuance of such a subpoena from a party who is, at the time such request is made, represented by an attorney with independent subpoena authority sufficient to issue such a subpoena. Any party aggrieved by the Referee's decision on a subpoena request may petition for review of such decision, but only as a part of any subsequent petition which addresses the Referee's eventual decision on the appeal by way of either an appeal to the Board or a motion to the Referee to reopen, vacate, set aside or modify.

(d) If any person refuses to obey a subpoena issued by the Referee, the Referee may request the Attorney General to make application to the Superior Court for an order requiring such person to appear before the Referee to provide testimony or the physical evidence in question.

(e) Subject to the approval of the Chairman of the Board, witnesses appearing before a Referee pursuant to a subpoena issued by the Referee shall be allowed fees as provided by Connecticut law in civil actions.

(f) If the Referee determines that the fair adjudication of an appeal before such Referee requires the issuance of a subpoena in a jurisdiction beyond Connecticut, such Referee shall so inform the Chairman of the Board of Review and the Chairman shall thereupon request the appropriate authorities of such jurisdiction to issue the subpoena, or to take such other action as will reasonably resolve the need for same.

(Effective June 23, 1986)

Sec. 31-237g-22. Responsibility of party to present testimony and evidence

(a) It is the responsibility of each party to present at the hearing before the Referee all witnesses, testimony, evidence and argument material to such party's contentions concerning the appeal. Testimony and evidence personally presented at the hearing by individuals with actual personal knowledge of the facts in question is preferred, provided the weight to be afforded such testimony and evidence shall be determined by the Referee with consideration to the circumstances of each appeal. Any party, who, without good cause, fails to present at the hearing all testimony, evidence and oral argument material to such party's contentions

concerning the appeal may be deemed to have assented to the Referee's decision of the appeal solely on the basis of the credible testimony, evidence and oral argument presented at such hearing and the records already on file. The Appeals Division may refuse to provide, by reopening, remand or otherwise, a further hearing for purposes of presenting testimony, evidence or oral argument not presented at the Referee's hearing duly scheduled in any case wherein it is determined that, through the exercise of due diligence by the party involved, such testimony, evidence or argument could have been presented at such hearing and there was no good cause for such party's failure to do so.

(b) Immediately upon receipt of the written notice of a telephone hearing, it shall be the responsibility of each party to such telephone hearing, in addition to the other responsibilities applicable to such hearings, to:

(1) pursuant to the provisions of Section 31-237g-10(a) of these regulations, mail directly to the Appeals Division office which issued the notice and to each other party all proposed documentary evidence or written materials which such party wishes to introduce during such hearing;

(2) pursuant to Section 31-237g-17(b) (2) notify the appeals division if it intends to appear in person;

(3) arrange to have all witnesses that such party intends to introduce at such hearing present at either (A) the Appeals Division office conducting the hearing or (B) the location where such party will be participating by telephone in the hearing, or (C) such location as the notice directs will be acceptable;

(4) contact the Appeals Division office which issued the notice if such party is unable to satisfactorily arrange to have that party's witnesses at any of the locations specified in subsection (3) above.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-23. Responsibility of party to provide interpreter

(Statutory reference: 17-137k, 17-137p)

(a) Except as hereinafter provided in subsection (b), if any party or witness that such party expects to present at a hearing before the Referee cannot adequately speak or understand spoken English, it shall be the responsibility of such party to provide at the hearing, at such party's own expense, a proficient interpreter who is capable of completely and accurately interpreting for such person. The Referee may refuse to permit or consider testimony from any person who cannot adequately speak or understand spoken English and for whom a capable interpreter has not been supplied.

(b) If a deaf person is involved in any hearing before the Referee and a capable interpreter for such person is not otherwise supplied, the Referee shall request the Commission on the Deaf and Hearing Impaired to appoint a qualified interpreter for such deaf person throughout such proceeding and shall continue the hearing until such interpreter is available to interpret for such deaf person. The Appeals Division shall reimburse the Commission on the Deaf and Hearing Impaired for the actual cost, including travel expenses, of any interpreter so

supplied.

(c) The Referee may refuse to accept or consider as evidence any document written in a language other than English unless such document is interpreted at the hearing by an acceptable interpreter or it is accompanied by a correct English translation with proof satisfactory to the Referee that such translation is a correct translation of the original document.

(Effective January 1, 1988)

Sec. 31-237g-24. Disqualification of Referee

(Statutory reference: 31-242)

(a) A Referee shall voluntarily disqualify himself and withdraw from participating in any proceeding or decision on an appeal if such Referee has any interest in the appeal or in the business of any party to the appeal or in the business of any attorney or authorized agent for such party.

(b) A challenge to the interest of the Referee may be made by any party to the appeal, or the attorney or authorized agent for such party, by way of a request to the Referee to disqualify himself. Such a request may be oral or written but each request shall specifically describe all reasons for the request. Each such request shall be made as soon as the alleged interest on the part of the Referee is reasonably discoverable and, in all cases, prior to the mailing of the Referee's decision on the appeal. The Referee shall promptly decide each such request. Such decision need not be in writing but if the request is granted, the Referee shall so notify all parties and no further proceedings shall occur with regard to such file until a different Referee is substituted to decide the appeal. If the request is denied, the requesting party shall be notified and thereby have the option of either proceeding with the case before the Referee involved or immediately electing to file a challenge to the interest of such Referee with the Chairman of the Board and the requesting party shall be so notified of such option at the time such party is notified of the denial of the initial request. If the requesting party elects to then proceed with the case rather than file such a challenge, that party is not deemed to have waived any claim that such party may have concerning interest on the part of the Referee but may make such claim an additional ground of appeal from the final decision of the referee on the merits. If the requesting party elects to respond to the denial of such request by filing a challenge to the interest of the Referee with the Chairman, that party shall so inform the Referee and, within ten (10) days of the date of the Referee's denial of the request, file with the Chairman a written document which shall be titled "Challenge to the Interest of the Referee," prepared and delivered in accordance with Section 31-237g-10(a) of these regulations, and specifically describe all reasons for such challenge. Any requesting party who elects to file such a challenge but fails to timely file such challenge may be deemed to have waived such challenge. If a requesting party elects to file such a challenge, no further proceedings shall occur with regard to such file until such challenge is decided by the Chairman or otherwise waived. The Chairman shall promptly decide each such challenge on the basis of the written challenge and issue a written

decision thereon provided the Chairman may schedule an evidentiary hearing upon such challenge before issuing such decision. If the Chairman grants the challenge, the appeal shall be transferred to another Referee. If the Chairman denies the challenge, proceedings on the appeal shall recommence before the Referee involved. The party that filed the challenge may petition for review of a decision by the Chairman denying such challenge but only as a part of any subsequent petition which address the Referee's eventual decision on the appeal by way of either an appeal to the Board or a motion to the Referee to reopen, vacate, set aside or modify.

(c) The mere fact that a Referee may have already heard an appeal does not, in itself, constitute sufficient interest in the proceedings which would preclude such Referee from hearing such appeal again upon remand from higher authority. The mere fact that a Referee may have previously decided a case involving one or more parties to an appeal pending before that Referee does not, in itself, constitute sufficient interest in the proceedings which would preclude such Referee from hearing the pending appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-25. Withdrawals; dismissals

(Statutory reference: 31-242)

(a) The appealing party may request withdrawal of his appeal to the Referee and upon receipt of such a request the Referee shall issue a decision dismissing such appeal pursuant to the request provided (1) the request is in writing, (2) the request is voluntary and signed by the appealing party or the attorney or authorized agent for such party, (3) the request is received by the Appeals Division office involved prior to the Referee's issuing a decision on such appeal, and (4) prior to issuing a dismissal decision pursuant to such request the Referee may make inquiry, at hearing or otherwise, to determine if such request was voluntarily made with knowledge of the consequences involved. A withdrawal request received by the referee after the issuance of the decision on the appeal may be treated by the referee as a motion to reopen his decision.

(b) A dismissal decision issued pursuant to a withdrawal request shall be issued in accordance with Sections 31-237g-13 and 31-237g-34 (c) of these regulations and shall include a reference to the withdrawal request granted, but need not otherwise comply with Section 31-237g-33 (b) of these regulations. Such a dismissal decision shall become final in accordance with Section 31-237g-34 (a) of these regulations. If a withdrawal request is not granted by the Referee, the Referee shall continue with the normal adjudication of the appeal but shall, in the Referee's subsequent decision on the appeal, state the reason for the Referee's refusal to grant such withdrawal request.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-26. Failure to timely appear at hearing; dismissal

(a) A party shall be deemed to have failed to timely appear at a scheduled hearing before the Referee when such party fails to appear at the location of the hearing within 10 minutes

after the scheduled time for such hearing. For purposes of this section, a party to a telephone hearing shall appear by telephoning the designated Appeals Division telephone hearing number within ten (10) minutes after the scheduled time for such hearing unless such party otherwise appears in person at the Appeals Division office conducting such hearing. A party may be deemed to have appeared if any attorney, authorized agent or witness appears on behalf of such party within such 10 minutes. Unless otherwise stipulated with the consent of the Referee, the Referee's watch or timepiece shall be the sole instrument by which timely appearance at the hearing is determined.

(b) If the appealing party fails to timely appear at a scheduled hearing, the Referee may, following a review of the existing record:

(1) issue a decision dismissing such appeal, pursuant to subsection (f) hereunder, due to the failure of the appealing party to prosecute the appeal, if no error is apparent on the face of the record; or

(2) proceed with the hearing and take the testimony, evidence and argument put forward by those present, if any, consider the documentary record established by the Administrator, and issue a decision on the merits of the appeal if the Referee determines that good cause exists for doing so. Good cause may include but need not be limited to the following:

(A) a non-appealing party present expressly requests to so proceed, provided that in such instance the Referee shall advise the requesting party that in the event that another hearing is scheduled on the case it will be advisable for such party to again appear and participate at such further hearing;

(B) the Referee determines, with or without the appearance of any party at the hearing, that the documentary record established by the Administrator does not support the Administrator's decision appealed from;

(C) the appealing party has appeared for the hearing more than 10 minutes past the scheduled starting time but the Referee determines that it will nevertheless be administratively feasible to proceed with the hearing;

(3) reschedule or continue the hearing if the Referee reasonably determines that good cause exists for doing so.

(c) If the appealing party appears at a scheduled hearing, but any non-appealing party fails to appear, the Referee shall proceed with the hearing and take the testimony, evidence, and argument put forward by those present, consider the documentary record established by the Administrator and thereafter issue a decision on the merits of the appeal provided that the Referee may reschedule the hearing if the Referee determines that good cause exists for doing so.

(d) When any party, attorney or authorized agent realizes that such party, attorney or agent will likely not timely appear at a scheduled hearing, it is the responsibility of such party, attorney or agent to immediately report such fact, and the reason therefor, to the Appeals Division office involved. The Appeals Division shall record such report, and the time it was received, in the file of such case. Such report shall be part of the record in the case. The Referee may refuse to grant a motion to reopen, vacate, set aside or modify filed

on behalf of any party which failed to timely reveal good cause for the failure of such party, or that party's representative, to timely appear at the scheduled hearing or to provide timely notice to the appeals division of its inability to appear. The failure of an authorized agent that represents parties for a fee to comply with this subsection may be deemed a violation of Section 31-272-4 of the Regulations of Connecticut State Agencies.

(e) When a party, attorney, authorized agent or witness presents himself to a Referee at the location of a scheduled hearing at a time subsequent to the disposition of that hearing, the Referee shall record in the file of such case the name of such person, the time of such late arrival, and the reason given, if any, for such late arrival.

(f) A Referee decision dismissing an appeal due to the failure of the appealing party to appear at the scheduled hearing and prosecute the appeal may consist of a short-form decision which shall conform with Section 31-237g-13 and 31-237g-34(c) of these regulations, include a statement of the time allowed for appearance at the scheduled hearing, a statement that the appealing party failed to so timely appeal, and an announcement of the Referee's decision dismissing such appeal pursuant to subsection (b) (1) above. Such decision need not otherwise comply with Section 31- 237g-20(b) of these regulations. Any appealing party whose appeal was dismissed pursuant to this section may, pursuant to Section 31- 237g-34 of these regulations, file a motion to reopen, vacate, set aside or modify such dismissal decision, or file an appeal to the Board from such decision.

(g) For purposes of this section, good cause shall include such factors listed in Section 31-237g-15(b) of these regulations as may be relevant to a party's failure to appear.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-27. Untimely appeal; lack of aggrievement; moot appeal; dismissal

In any case where the Referee's jurisdiction over the appeal appears to be the preliminary issue due to questions concerning the timeliness of the filing of the appeal, the aggrievement of the appealing party, mootness of the appeal, or any other reason, the Referee shall schedule a hearing upon the appeal but may (1) limit the hearing to such jurisdictional issues and thereafter issue a written decision limited to such issues, provided the Referee shall schedule a further hearing to take evidence and testimony on the remaining issues in the event that the decision rules that the Referee has jurisdiction over the appeal, or (2) schedule a full hearing on all coverable issues and thereafter issue a decision, provided that if the Referee rules that the Referee lacks jurisdiction, the decision shall be limited to the issue of jurisdiction.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-28. Hearing record

(Statutory reference: 31-244a)

(a) The Referee shall prepare or arrange to have prepared, by cassette tape recording or other means susceptible to transcription, a complete hearing record of all proceedings at any hearing before the Referee. Such hearing record shall be the official hearing record.

(b) Any party or witness at a hearing before the Referee may arrange for the preparation of a private record of such hearing provided:

(1) the Referee may at any time refuse to permit or may order such person to discontinue the preparation of such private record if the Referee deems the preparation of such private record to limit the fairness or effectiveness of the hearing on the condition that the Referee state on the hearing record the Referee's reasons for such order; and

(2) such private record of the hearing may not, except upon the stipulation of all parties and the consent of the Referee, be allowed to contravene, supplement or otherwise affect the official hearing record prepared by the Referee.

(c) The Referee may permit limited discussions to occur off the hearing record for good cause. If the Referee permits any such proceedings to occur off the record, the Referee shall, prior to going off the record, announce such fact, including the reason therefor, and immediately upon thereafter resuming proceedings on the record the Referee shall summarize the essentials of such off-the-record discussions.

(Effective June 23, 1986)

Sec. 31-237g-29. Rights of parties at hearing

Subject to the authority and control of the Referee and such rights otherwise provided in these regulations, each party at a hearing before the Referee shall have the right to:

(a) present a brief opening statement as to such party's position concerning such appeal;

(b) testify on any matter relevant and material to the issues involved;

(c) introduce evidence and exhibits relevant and material to the issues involved, provided that Sections 31-237g-22(b) and 31-237g-30(k) of these regulations concerning telephone hearings shall govern the introduction of documentary evidence at such a telephone hearing;

(d) call and examine any party or witness on any matter relevant and material to the issues involved;

(e) cross-examine any opposing party or witness on any matter relevant and material to the issues involved even if such matter was not covered in direct examination of such party or witness;

(f) impeach any party;

(g) impeach any witness regardless of which party first called such witness to testify;

(h) examine evidence, object to the introduction of evidence, object to questions or the responses to questions, and object to any aspect of the conduct of the hearing, provided the reason for any such objection is specified at the time of the objection;

(i) rebut the evidence and testimony against such party;

(j) present oral argument on the issues involved;

(k) briefly summarize such party's position concerning the appeal at the conclusion of testimony.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-30. Conduct of hearing

(Statutory reference: 31-242, 31-244a, 31-245, 31-254, 1-19 (b) (2), 1-18a (e) (5))

(a) The Referee shall hear the case *de novo,* and shall not be bound by the previous decision of the administrator. The Referee shall conduct and control the hearing informally and shall not be bound by the ordinary common law or statutory rules of evidence or procedure. The Referee shall make inquiry in such manner, through oral testimony and written and printed records, and take any action consistent with the impartial discharge of his duties, as is best calculated to ascertain the relevant facts and the substantial rights of the parties, furnish a fair and expeditious hearing, and render a proper and complete decision. The Referee may, at any time, examine or cross-examine any party or witness, and require such evidence as the Referee determines to be necessary for a proper and complete decision. The Referee may, at any time, indicate on the record that the testimony being presented is not being supplied by a person with actual personal knowledge of the facts in question. The Referee shall determine the order for presentation of evidence and he may exclude testimony and evidence which he determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper, provided that, before excluding any such evidence, the referee shall permit the offering party an opportunity to describe the evidence and to explain its reliability and importance to the case. When a party is not represented by an attorney, the Referee shall, as he deems necessary in the interests of justice, advise such party as to his rights, aid him in examining and cross-examining witnesses, help him in presenting evidence and otherwise render such assistance as is compatible with the impartial discharge of the Referee's duties.

(b) The Referee shall have authority to administer oaths and affirmations. All testimony at the hearing before the Referee shall be under oath or affirmation which shall be included on the hearing record. Any interpreter participating in such hearing shall so interpret under the separate oath for interpreters which shall also be included on the hearing record. Upon administering such oath or affirmation, the Referee may require the interpreter to interpret, to the extent possible, word for word in the first person as the person being interpreted for so communicates.

(c) The hearing shall be confined to the issues which the notice of hearing issued pursuant to Section 31-237g-17(e) of these regulations indicates may be covered at the hearing. The hearing may also cover, at the discretion of the Referee, any separate issue which the parties are prepared and willing to go forward on and on which they expressly waive right to notice of.

(d) At the commencement of the hearing, the Referee shall, on the hearing record:

(1) announce the title and case number of the appeal;

(2) announce the commencement time, date and location of the hearing;

(3) announce the identity of the Referee and indicate that the Referee is a member of the Appeals Division which is separate and independent from the Administrator;

(4) identify all parties, representatives and witnesses present, indicate on whose behalf each such representative or witness is appearing, and verify the mailing addresses of all

such parties and representatives;

(5) explain the procedure to be followed at the hearing, including a statement as to the Referee's full authority over the conduct of the hearing.

(6) explain the *de novo* nature of the hearing, provided it is explained that the Administrator's records shall be considered as evidence;

(7) indicate that the hearing will be taped and that the official record thus obtained will be kept during the pendency of the appeal;

(8) indicate that the hearing will likely be the only full evidentiary hearing granted in the case due to the fact that further appellate review is generally limited to a review of the record created at such hearing and therefore all parties in attendance should take pains to insure that they present at such hearing all testimony and evidence that they believe is material to the issues involved;

(9) summarize the rights and responsibilities of the parties at the hearing pursuant to these regulations;

(10) indicate that a written decision upon the appeal will be mailed by the Referee to all parties and representatives with reasonable promptness following the close of the hearing, and advise the parties as to the appeal rights of the party aggrieved by such decision;

(11) advise the claimant to continue to file benefit claims as instructed by the Administrator in order to preserve the claimant's rights during the pendency of the appeal;

(12) summarize the case history of the appeal and indicate the issues which appear to be involved;

(13) indicate which party has the burden of proof, if any, with regard to the issues involved;

(14) announce that the Appeals Division has statutory power to authorize and limit the fees payable for representation of a claimant in such proceedings and that if either the claimant or such representative so requests, the Appeals Division shall rule on that matter.

(e) The relevant Administrator's documents in the file record shall be considered as evidence by the Referee subject to the right of any party to object to the introduction of such documents or any part of such documents. The Referee shall itemize and summarize such records and allow such parties, and the attorneys and authorized agents for such parties, to inspect such documents and offer evidence and testimony in rebuttal to the information or contentions contained in those documents. All documents and records which the Referee accepts into evidence shall be clearly and separately labeled by the Referee to indicate the party submitting same and shall be included in the file record. Documentary evidence may be received in the form of legible photocopies. Physical evidence shall also be labeled and placed in the file record if practicable, or otherwise described in detail by the Referee on the hearing record. Any party which seeks to introduce at the hearing documents, records or other written evidentiary materials should, at the time of introduction, supply each other party and the Referee with a copy of such written material.

(f) Hearings shall be open to the public unless, consistent with the Freedom of Information Act and other applicable provisions of the Connecticut General Statutes, the

Referee finds sufficient cause for a closed hearing. The Referee, upon the referee's own initiative or upon the request of any party, may sequester a witness from the hearing room if the Referee deems such sequestration to promote the effective conduct of the hearing. Whenever the hearing is closed or reopened to the public, or a witness is excluded or readmitted to the hearing room, the Referee shall so indicate upon the hearing record along with the Referee's reason for such action. If a party, attorney or authorized agent, appears at the hearing after the commencement of the hearing, the Referee shall note on the record the time of the late arrival, and may summarize the proceedings up to that point before proceeding with the hearing.

(g) The Referee shall not permit improper behavior or tactics, including the intentional disregard of these regulations or the proper instructions of the Referee, which are disruptive of the fair, orderly or effective conduct of the hearing. Any person, attorney or authorized agent other than a party who engages in such improper conduct shall be warned by the Referee, on the hearing record, against continuing such behavior, and if such person thereafter persists in such proscribed conduct the Referee may, if the Referee reasonably deems it necessary, expel such person from the hearing provided that the Referee indicates on the hearing record his reason for such action. Any party that engages in such improper conduct shall be warned by the Referee, on the hearing record, against continuing such behavior, and if such party thereafter persists in such behavior the Referee may, if the Referee reasonably deems it necessary, (1) proceed with the hearing under such instructions and conditions as the Referee deems fair and appropriate; (2) recess or reschedule the hearing; or (3) close the hearing and issue a decision based upon the testimony and evidence received, provided that the Referee indicates on the hearing record his reason for such action.

(h) A hearing before the Referee may, at the initiative of the Referee or the oral or written request of a party, be briefly recessed or continued to another time, date, or place if the Referee determines that good cause exists for such recess or continuance. Such good cause shall be stated on the record. Unless waived by all parties present, notice of a continuance shall be issued by the Referee pursuant to Section 31-237g-17 of these regulations.

(i) The Referee may permit any party, or the attorney or authorized agent of record for such party, to file with the Referee at the hearing written argument concerning such appeal, provided a copy of such argument is delivered to each other party present at such hearing. Such written argument may supplement, but not serve in lieu of, testimony and evidence presented under oath and subject to cross-examination at the hearing duly scheduled upon an appeal.

(j) At the conclusion of the hearing the Referee shall announce on the record both the fact and time of such conclusion. The Referee may, prior to the conclusion, at the Referee's own initiative or upon the request of a party for good cause shown, on the record grant a limited extension of time, prior to the issuance of the Referee's decision, for the filing by a party of (1) written argument and/or (2) additional documentary evidence. In granting a request for the filing of additional documents, the Referee shall describe the significance and identity of such documents; require that the documents be provided to all other parties

at the same time as they are filed with the Referee; and permit all other parties a reasonable time in which to object to the inclusion of such documents in the record, file argument or evidence in rebuttal, or request a further hearing. All such written materials filed pursuant to this subsection should be filed in accordance with Section 31-237g-10 (a) of these regulations or as the Referee prescribes.

(k) Telephone hearings shall be conducted in accordance with the provisions of the subsections above, provided that the Referee shall also determine, at the commencement of the hearing, if the Appeals Division and each party, attorney or authorized agent in attendance has received copies of the file records supplied by the Appeals Division and all documentary evidence and materials supplied by any party. If any party seeks to introduce at such telephone hearing any documentary evidence or material of which the Appeals Division or any other party has not, at the time of the hearing, yet received a copy, the Referee may require a specific identification of such material and an explanation of the alleged importance of such documentary evidence or material to the appeal involved. If as a result of such explanation the Referee determines that such material is important to the appeal the Referee may: (1) if practicable, permit such documentary evidence or material to be read into the record provided that, pursuant to the guidelines of Section 31-237g-10 (a), such documentary evidence or material shall thereafter be filed with the Referee and all other parties in accordance with the time limitation that the Referee may reasonably direct; (2) if the Referee deems it necessary and appropriate, reschedule the hearing; (3) take such other action as the Referee deems appropriate. Any party who takes exception to such written materials filed after the hearing and is aggrieved by the Referee's subsequent decision on the appeal may file, pursuant to Section 31-237g-35 of these regulations, a motion to reopen, vacate or set aside such decision for purposes of requesting the opportunity to file other written materials in rebuttal or the opportunity for a further hearing on the matter.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-31. Transfer to the Board

(Statutory reference: 31-248a)

(a) At any time during the pendency of an appeal to the Referee and prior to the Referee's decision on such appeal becoming final, the Board may, on its own motion or the written request of a party or the Referee filed with the Board within such time period, transfer such appeal to the Board. Any appeal transferred to the Board shall thereafter be treated and processed as an appeal to the Board provided that an appeal transferred to the Board prior to a hearing before a Referee shall thereafter be scheduled for an evidentiary hearing prior to the issuance of the Board's decision upon such transferred appeal. Any such request shall be filed with the office of the Referee Section where such appeal is pending and promptly thereafter forwarded by such office to the Board.

(b) Any written request pursuant to subsection (a) above should be prepared pursuant to Section 31-237g-10(a) of these regulations and should describe all good cause alleged for

such transfer, which good cause may include, but need not be limited to, one or more of the following reasons:

(1) the existence in such case of substantially complex questions of fact or law which will require extensive testimony and/or consideration;

(2) the ultimate decision issued in such case will have significant precendential value;

(3) the case in question is a consolidated proceeding or the particular facts and circumstances involved in the instant case are representative of a significant number of substantially similar cases;

(4) the continuation of the case at the referee level may result in substantial harm or prejudice to the party;

(5) where a case involving related issues or parties is before the board, it would benefit the board to consider the cases together and no substantial harm or prejudice will result to any party.

(c) The filing of any written request pursuant to subsection (a) and (b) above shall not stay or toll any time limitation applicable to such appeal before the Referee. The Board shall promptly issue a written decision upon each such request. The general provisions of 31-237g-49(a) of these regulations to the contrary notwithstanding, a Board decision on a transfer request is not subject to appeal rights but may be subject to a motion to the board to reopen.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-32. Certifications to the Board

(Statutory reference: 31-249f)

(a) If, in any proceeding before the Administrator, the Administrator has serious doubt as to the correctness of any applicable principles previously declared by a Referee or the Board, or if there is an apparent inconsistency or conflict in applicable final decisions of comparable authority, the Administrator may certify to the Board the findings of fact in such case, together with the question of law involved, and withhold decision pending receipt of the certification decision by the Board. Each such certification by the Administrator should be prepared and delivered in accordance with Section 31-237g-10(a) of these regulations. The Board shall treat and process each such certification pursuant to these regulations in the same manner as an appeal and issue to the Administrator and the parties to such proceeding a written decision certifying the Board's answer to the question submitted, provided the Board shall grant any request for a Board hearing on the law which is timely-filed concerning such certification. The general provisions of Section 31-237g-49(a) of these regulations to the contrary notwithstanding, there shall be no appeal with regard to the Board's certification decision. However, any party aggrieved by the Administrator's determination may object to the Board's certification decision as part of its appeal from the Administrator's determination.

(b) If, in any proceeding before the Referee, the Referee has serious doubt as to the correctness of any applicable principles previously declared by a Referee or the Board, or

if there is an apparent inconsistency or conflict in applicable final decisions of comparable authority, the Referee may, subsequent to the hearing, certify to the Board the Referee's findings of fact in such case together with the question of law involved. The Referee shall withhold decision pending receipt of the certification decision by the Board. Each such certification by a Referee shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations. The Board shall (1) treat and process each such certification pursuant to these regulations in the same manner as an appeal and issue the Referee and the parties to such proceeding a written decision certifying the Board's answer to the question submitted provided the Board shall grant any request for a Board hearing on the law which is timely-filed concerning such certification; or (2) pursuant to Section 31-237g-31 of these regulations transfer to itself the entire proceeding and render a decision upon the entire case. The general provisions of Section 31-237g-49(a) of these regulations to the contrary notwithstanding, there shall be no appeal rights with regard to the Board's certification decision. Unless the Board transfers the proceeding to itself, the Referee shall issue a decision in such proceeding promptly following receipt of the Board's certification decision. Such Referee's decision shall be subject to the appeal rights normally applicable to such a decision by the Referee. Any party aggrieved by the Referee's decision may object to the Board's certification decision as part of its appeal from the Referee's decision.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-33. Decision of the Referee; content and form

(Statutory reference: 31-242, 31-249e)

(a) Each appeal to the Referee shall be reviewed, and a decision thereon prepared, with reasonable promptness following the close of the scheduled hearing. Except for dismissal decisions issued pursuant to Section 31-237g-25, 31-237g-26 and 31-237g-27 of these regulations, the Referee's decision shall affirm, reverse or modify the Administrator's decision or for good cause remand any issue properly before the referee to the Administrator for such further proceedings as the Referee reasonably instructs. In remanding the case to the Administrator the Referee may retain jurisdiction. If the Referee retains jurisdiction, upon the issuance of a new determination by the Administrator, the Referee shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing or modifying the Administrator's determination, provided that the Referee shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Referee does not retain jurisdiction, the Administrator's new determination shall inform the aggrieved party of its right to file a new appeal from the determination.

The general provisions of Section 31-237g-34(a) of these regulations to the contrary notwithstanding, a Referee's decision remanding an appeal to the Administrator is not separately appealable to the Board, but may be subject to a motion to reopen or may be made an additional ground for appeal from the Referee's final decision on the Administrator's new determination. The Referee's decision on an appeal shall rule upon each relevant issue necessary to the decision, provided (1) the notice of hearing issued

pursuant to Section 31-237g-17 of these regulations indicated that such issue could be covered at the hearing, or (2) the parties present waived notice of such issue and stipulated to coverage of such issue at the hearing.

(b) Each Referee decision on an appeal pursuant to subsection (a) above shall be prepared and issued in accordance with Section 31- 237g-13(a) of these regulations and shall also list the date and location of each hearing held together with the names and identities of all persons in attendance at such hearing and the relationship of each such person to the appeal. Except for dismissal decisions issued pursuant to Sections 31-237g-25, 31-237g-26 and 31-237g-27 of these regulations, each such decision shall include: (1) a case history of the appeal which indicates, but need not be limited to, the Referee's jurisdiction over the case; (2) the Referee's findings of fact; (3) the reason for the Referee's conclusions of law; (4) the Referee's ultimate decision on the appeal. The findings of fact and the reasons for the Referee's conclusions of law shall be stated separately, but the case history and the findings of fact may be combined under the general heading of "Findings of Fact," and the conclusions of law may be joined with the ultimate decision under the general heading of "Decision," provided said ultimate decision shall be clearly stated. The Referee's findings of fact shall contain all findings of fact necessary to the resolution of each issue involved, and shall be based exclusively on the evidence and testimony in the file and hearing record and on matters officially noticed, and matters stipulated to with the Referee's approval. The Referee's conclusions of law shall cite and summarize the specific statutory and/or regulatory law involved, and shall indicate the reasons why the application of such law to the facts found results in the ultimate decision stated. The ultimate decision may include a statement as to the action to be taken by the Administrator, if any, as a consequence of such ultimate decision.

(c) The written general statement of appeal rights pertaining to such Referee's decision required by Section 31-237-13(a) of these regulations shall include, but need not be limited to, the following provisions under these regulations concerning appeals to the Board of Review:

(1) the time and place for filing such an appeal;
(2) the form and content of such an appeal;
(3) the option to submit written argument in support of such appeal;
(4) the option to request decision of such appeal by the full Board;
(5) the option to request scheduling of a Board hearing on such appeal; and
(6) the availability, at each Employment Security and Appeals Division office, of forms, the Manual of Precedential Decisions, and a copy of these regulations as reference for preparation of an appeal.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-34. Decision of the Referee; final date; motion and appeal distinguished

(Statutory reference: 31-248)

(a) A Referee's decision on an appeal shall become final on the twenty-second (22nd)

calendar day after the date on which a copy of such decision was mailed to the parties unless prior to said twenty-second day:

(1) a party aggrieved by the decision files either (A) an appeal to the Board of Review or (B) a motion to the Referee to reopen, vacate, set aside or modify such decision; or

(2) the Referee, on his own motion, reopens, vacates, sets aside or modifies such decision in accordance with the terms of Section 31-237g-35 of these regulations.

(b) Every motion or appeal pursuant to this section shall be filed at any office of Employment Security, the Appeals Division or any Employment Security office of any other state in which the filing party is located at the time of filing. Each such motion or appeal may be filed in person, by fascimile transmission (fax), by internet or by mail but to be acceptable as timely filed, it must be actually received at such office within the twenty-one (21) calendar days allowed by law, must bear a legible United States postal service postmark which indicates that within such twenty-one day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in Section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If the last day for filing such a motion or appeal falls on a day when the office where such appeal was actually filed was not open for business, such last day shall be extended to the next business day of such office. It is generally advisable, to the extent that it can be accomplished within the allotted twenty-one day period, to file such appeal or motion with the specific Appeals Division office which rendered the decision. Any appeal or motion filed after the twenty-one day period has expired may be considered timely filed if the filing party shows good cause for the late filing.

(c) For purposes of this section, a party has good cause for failing to file an appeal within twenty-one (21) calendar days of the issuance of the Referee's decision if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the Board shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with the Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the appeals division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing an appeal once the reason for the late filing no longer existed;

(ix) Where there is substantial prejudice to an adverse party which prevents such party

from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its appeal.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause, the Board shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the appeal is excessively late, and whether the party otherwise acted with due diligence.

(d) An appeal to the Board from a Referee's decision on an appeal generally has consequences different from a motion to the Referee to reopen, vacate, set aside or modify such a decision. An appeal to the Board may, regardless of its title, be treated and processed by the Referee as such a motion for purposes of granting the motion by way of reopening, vacating, setting aside or modifying such a decision, solely in order to grant the relief requested. A clearly titled motion to the Referee to reopen, vacate, set aside or modify such a decision shall be treated and processed by the Referee as such motion, except as provided in section 31-237g- 35(b). If a Referee does so process a document which purports to be an appeal to the Board as a motion to reopen, the Referee shall immediately so notify the Board and provide the Board with a copy of both the document in question and the Referee's written response to such document. After an appeal to the Board is processed as such an appeal, no motion to the Referee to reopen, set aside or modify the appealed decision shall thereafter be accepted or acted upon by the Referee. However, after a motion to the Referee to reopen, vacate, set aside or modify the decision is filed with the Referee, both a Referee's decision denying such a motion and the Referee's preceding decision on the appeal may be appealed to the Board within twenty-one (21) calendar days following the mailing date of the Referee's decision denying such motion. The Referee shall refuse to accept both such a motion and an appeal filed simultaneously with regard to the same Referee decision and in such event the Referee shall accept and process whichever remedial petition the Referee deems proper and the remaining petition shall, except as otherwise provided in these regulations, be void. Whenever possible, the Referee shall treat and process an appeal or motion in such a way as to preserve the right of the appealing party to seek further review by the Board.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-35. Motion to the Referee to reopen, vacate, set aside, or modify

(Statutory reference: 31-248)

(a) The Referee may, within the time limits set forth in Section 31-237g-34 above, reopen, vacate, set aside or modify a decision on an appeal if the Referee determines, for good cause shown, that new evidence or the ends of justice so require. Each motion to reopen, vacate, set aside or modify a Referee's decision on an appeal shall be filed by means of a typed or legibly printed statement which should:

(1) be clearly entitled at the top center of the front page "Motion to the Referee to Reopen," "Motion to the Referee to Vacate," "Motion to the Referee to Set Aside," or "Motion to the Referee to Modify," as the case may be;

(2) describe all the reasons and good cause for such motion and, if new evidence is alleged as such a reason, the following should be further specified:

(A) the identity and nature of such alleged new evidence;

(B) the reason why such alleged new evidence was not presented at the hearing previously scheduled; and

(C) the reason why such alleged new evidence is material to the case;

(3) otherwise follow the guidelines set forth in Section 31-237g- 10(a) of these regulations.

(b) Any such motions may be filed upon the same Referee decision by any party, but all such motions by such party shall be filed simultaneously and should be filed by means of separate documents and no such motion by any party shall be permitted or accepted by the Referee with regard to the Referee's decision denying a preceding motion filed by such party. The Referee may process any subsequent motion as an appeal to the Board.

(c) No hearing shall be held upon such motions unless the Referee determines that good cause exists for such a hearing, except that no such motion shall be dismissed as untimely without a hearing if the motion recites a reason for the untimely filing that would constitute good cause pursuant to Section 31-237g-15 of these regulations. The Referee shall, with reasonable promptness, review each such motion and issue a written decision thereon. The Referee's decision on any such motions shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations and shall include a statement as to the reasons for the decision. In any case wherein a further hearing is not scheduled as a consequence of a Referee's decision reopening, vacating, setting aside or modifying a Referee's decision, the Referee shall provide all non-moving parties to such case with (1) a copy of such motion, together with all supplemental documentation filed in support of such motion, and (2) a reasonable opportunity to file a written response to such motion prior to the Referee's issuance of a new decision in the case.

(d) The Referee may deny any such motion based upon the allegations of new evidence if the Referee determines that the new evidence is unnecessarily duplicative or is not likely to affect the result in the case, or that the exercise of reasonable diligence by the moving party would have resulted in the presentation of such evidence at the hearing previously scheduled and the moving party does not otherwise show good cause for such party's failure to present such evidence.

(e) Any party aggrieved by a decision of a Referee with regard to any such motion may appeal to the Board within twenty-one calendar days of the mailing of such decision as set forth in Section 31-237g-34(b) and (c).

(Effective January 1, 1988; Amended October 27, 1997)

Article III

Appeals to the Board

Sec. 31-237g-36. Appeal to the Board; form; processing

(Statutory reference: 31-249, 31-249a)

(a) Each appeal to the Board from a Referee's decision on an appeal should be filed by the use, pursuant to the instructions contained thereon, of the form prescribed by the Board for such purpose and made available by the Administrator at each Employment Security office, or by means of a document which should:

(1) be entitled, at the top center of the first page: "APPEAL TO THE BOARD OF REVIEW";

(2) be prepared in accordance with Section 31-237g-10 (a) of these regulations.

(b) Immediately upon receipt of an appeal to the Board of Review the Employment Security office involved shall:

(1) stamp the front page of the appeal and the front page of all supplemental documentation accompanying the appeal to indicate the date and the office where such appeal was filed:

(2) forward such appeal, and all the documentation accompanying the appeal to the Appeals Division office maintaining the file records concerning the Referee's decision involved.

(c) Immediately upon receipt of an appeal to the Board of Review at the Appeals Division office maintaining the file records concerning such Referee's decision, the Referee shall, without undue delay, either (1) treat and process such appeal petition as a motion to the Referee to reopen, vacate, set aside or modify such decision, or (2) treat and process such appeal petition as an appeal to the Board of Review. If the Referee treats such petition as an appeal to the Board of Review, the Appeals Division office involved shall immediately thereafter provide the Board with the original appeal and all accompanying documentation, a copy of the Referee's decision involved, the originals of all other written file records in such case including exhibits and other documentary or physical evidence, and the original official cassette tape hearing record for each hearing held, if any.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-37. Appeal to the Board; recommended content; reasons

Each appeal should clearly describe all reasons for the appeal. Any disagreement with the Referee's findings of fact, procedural conduct of the hearing, or stated conclusions of law should be specified, and the alleged importance to the case of each such disagreement should be explained. The Board shall review the file record in consideration of every timely-filed appeal, and thereafter issue a written decision addressing the factual and legal claims stated in such appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-38. Appeal to the Board; optional content; written argument

Each appeal may include, under the separate heading of "WRITTEN ARGUMENT," such further statements, summarizations or written argument that such party wishes the Board to consider concerning such appeal. The Board shall consider all such arguments contained in each timely-filed appeal prior to issuing a decision on such appeal. Such written argument may supplement, but not serve in lieu of, testimony and evidence presented under oath at the hearing duly scheduled upon an appeal, and in no event will evidentiary allegations contained in written argument be considered or treated by the Board as testimony or evidence.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-39. Appeal to the Board; optional content; request for decision by the full Board

Each appeal may include, under the separate heading of "REQUEST FOR DECISION BY THE FULL BOARD," a statement requesting that the full three-member Board decide the appeal, and the full three-member Board shall decide each timely-filed appeal containing such specific request.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-40. Appeal to the Board; optional content; request for Board hearing; supplementing the record

(Statutory reference: 31-249)

(a) The Board usually decides appeals on the basis of the record established before the Referee, and does not generally conduct further hearings to take additional evidence or testimony, rehear evidence and testimony already presented to a Referee, or hear oral argument. However, if the Board determines that the ends of justice so require, the Board may order that a further hearing be scheduled before the Board or a Referee for such purposes as the Board may direct. Circumstances in which the Board may reach such a determination on any appeal may include, but are not limited to, the following:

(1) the findings of fact contained in the decision appealed from are silent, incomplete, or erroneous on factual issues material to the review of the case;

(2) the existence of substantially complex, significant or unusual issues of fact or law which are material to the review of the case;

(3) the procedural conduct of the Referee's hearing appears to have materially denied any party a fair hearing;

(4) for good cause shown, evidence or testimony material to the case was not presented at the hearing previously scheduled;

(5) the case is a consolidated proceeding;

(6) the ultimate decision will have significant precedential value.

(b) Each appeal may include, under the separate heading of "request for board hearing," a statement requesting the Board to order the scheduling of a further hearing. Each such

request should:

(1) describe any evidence or testimony that the requesting party desires to introduce at such hearing, explain the importance of such evidence or testimony for review of the case and state how such evidence is likely to affect the outcome of the case;

(2) indicate whether the evidence or testimony described in (1) above was presented at the hearing previously scheduled and (A) if such evidence or testimony was so presented, explain why an additional hearing is necessary, and (B) if such evidence was not so presented, explain why it was not;

(3) if the opportunity for oral argument is alleged as a reason for such request, explain why such oral argument is alleged to be necessary for review of the case;

(4) describe each other reason, if any, why the ends of justice require the scheduling of a further hearing.

(c) The Board may refuse to grant a request for a Board hearing from any party who fails to show good cause for such party's failure to introduce the evidence, testimony or oral argument described in subsection (b) at the hearing previously scheduled.

(d) If the Board grants a request for a Board hearing, advance notice of the hearing, and the attendant rights and responsibilities of the parties concerning such hearing, shall be mailed to the parties pursuant to the applicable provisions of these regulations. If the Board denies such request, the Board decision on the appeal shall specifically indicate denial of such request.

(e) In any case in which the Board deems the record on review to be incomplete or deficient, the Board, on its own motion or at the request of any party, may notify the parties of its intent to supplement the record and may request any party to provide to the Board such evidence or argument as the Board may direct. In any case in which the Board supplements the record, it shall allow all parties a reasonable opportunity to object to the filing of additional evidence or argument, offer evidence or argument in rebuttal, or request a further evidentiary hearing.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-41. Untimely appeal; lack of aggrievement; moot appeal; dismissal

Upon receipt of any appeal over which the Board determines it has no jurisdiction due to (1) the untimely filing of the appeal; (2) lack of aggrievement on the part of the appealing party; (3) mootness of the appeal; or (4) any other reason, the Board shall assign such appeal a case number and, unless the Board determines that a hearing is necessary, thereafter issue a decision dismissing such appeal. The Board's determination of such jurisdictional issues may be based solely upon review and consideration of the records concerning such jurisdictional issues. Such dismissal decisions shall contain findings of fact and conclusions of law concerning the jurisdictional issues involved and otherwise comply with Section 31-237g-48 except that such dismissal decisions need not comply with subsections 31-237g-48(b) (4), 31-237g-48(b) (6), or 31-237g-48(b) (7). The Board may, at any time during the pendency of an appeal before it, issue, pursuant to this section of these

regulations, a decision dismissing the appeal if the Board determines such appeal to be moot.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-42. Timely appeal to the Board; notice of appeal

(a) Upon receipt by the Board of a timely filed appeal from a Referee's decision, the Board shall assign such appeal a case number and promptly mail to all parties a written notice of appeal which shall acknowledge the Board's receipt of such appeal, provide a copy of such appeal to the non-appealing parties, and contain an announcement of the rights of each party pursuant to subsection (b) below.

(b) Any party may, within ten (10) days following mailing of the notice of appeal pursuant to subsection (a), file with the Board written argument in accordance with Section 31-237g-38, a request for decision of such appeal by the full Board in accordance with Section 31-237g-39, or a request for a Board hearing in accordance with Section 31-237g-40. All such correspondence should be prepared and delivered in accordance with Section 31-237g-10 (a) of these regulations. Any such documents timely filed with the Board shall be included and treated in the Board's review and consideration of the appeal. Any such documents filed beyond such time period will also be considered if it is possible to do so before issuance of the Board's decision.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-43. Withdrawals; dismissal

(a) The appealing party may request withdrawal of his appeal to the Board and the Board may issue a decision dismissing such appeal pursuant to such withdrawal request provided (1) the request is in writing, (2) the request is voluntary and signed by the appealing party or the attorney or authorized agent for such party, (3) the request is received by the Board prior to the Board's issuing a decision on such appeal, (4) the Board does not find the decision appealed from to be clearly inconsistent with the law or precedent, and (5) prior to issuing a dismissal decision pursuant to such request, the Board may make inquiry, at hearing or otherwise, to determine if such request was voluntarily made with knowledge of the consequences. A withdrawal request received by the board after the issuance of a decision on the appeal may be treated by the board as a motion to reopen its decision.

(b) A dismissal decision issued pursuant to a withdrawal request shall be issued in accordance with Section 31-237g-13 of these regulations and shall include a reference to the withdrawal request approved and the authority for such approval but need not otherwise comply with Section 31-237g-48 (b) of these regulations. Such dismissal decision shall become final in accordance with Section 31-237g-49 (a) of these regulations. If a withdrawal request is not approved by the Board, the Board shall continue with the normal adjudication of the appeal but shall, in the Board's subsequent decision on such appeal, state the reasons for the Board's refusal to approve such withdrawal request.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-44. Stipulations; official notice; consolidated proceedings

(a) The parties to a proceeding before the Board may stipulate to facts or procedures, and the Board may accept such stipulations if the Board determines such stipulations to be consistent with the actual facts, the law and these regulations.

(b) The Board may take official notice of judicially cognizable facts and generally recognized, technical, or scientific facts within the Board's specialized knowledge. Any facts officially noticed shall be specifically identified as such in the Board's decision. Any party who (1) is aggrieved by a Board decision which incorporates a fact which was officially noticed by the Board but not specifically addressed at a hearing and (2) disputes such fact officially noticed may, pursuant to Sections 31-237g-49 and 31-237g-50 of these Regulations, file a motion to reopen such case for purposes of scheduling a further evidentiary hearing on such case. If the motion is timely filed and specifically alleges such conditions, the Board shall grant such motion.

(c) For good cause, any number of proceedings before the Board may, at the initiative of the Board or at the request of a party, be consolidated for hearing, review or decision, provided that the board notifies the parties of its intention to consolidate and the reasons therefor and provides the parties a reasonable opportunity to object. A board decision to consolidate is not separately appealable but is subject to a motion to reopen or may be made an additional ground for appeal from the board's final decision on the merits. For purposes of this subsection, good cause includes, but is not limited to:

(1) the facts and circumstances of each case are substantially similar, (2) the legal issues are related, (3) such consolidation will not unduly complicate the issues involved, (4) consolidation will aid the board in creating a more complete record or resolving complex or significant issues of fact or law, and (5) no substantial right of any party will be significantly prejudiced.

(d) The board may request that a party sign a written stipulation which (1) waives such party's claim to an individual and separate hearing, review and decision; (2) appoints one or more individuals or entities to serve as representatives of such party for purposes of any hearing held; and (3) binds such party by the representation so afforded during such proceeding.

Any stipulation for consolidation signed by a claimant at the time of his filing a claim for benefits or during a proceeding before the Referee which recites that the stipulation shall remain in effect during the pendency of any appeal before the Board shall be valid.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-45. Disqualification of Board members; assignment of alternative members

(Statutory reference: 31-237f; P.A. 87-468)

(a) A Board member shall voluntarily disqualify himself and withdraw from participating in any proceeding or decision on an appeal before the Board if such member has any direct or indirect interest in such appeal.

(b) A challenge to the interest of any Board member may be made by any party to the proceeding, or the attorney or authorized agent for such party, by a written petition which should (1) be prepared and filed with the Board in accordance with Section 31-237g-10 (a) of these regulations; (2) be entitled "Challenge to the Interest of a Member of the Employment Security Board of Review"; and (3) state the grounds for such challenge. Unless the challenge is terminated by voluntary disqualification, upon receipt by the Board of Review of such a petition, the Board shall mail the original petition to the clerk of the appropriate Superior Court and shall mail copies of such petition to each other party to the proceeding. Such challenge may be claimed for short calendar and shall be decided by the Superior Court. If the challenge is upheld, the Administrator shall so advise the Governor, and the Governor shall, in accordance with Section 31-237f of the Connecticut General Statutes, assign an alternate member appointed pursuant to Section 31-237c of the Connecticut General Statutes, provided the Staff Assistant shall, as Acting Chairman, substitute for the Chairman. Until such challenge is withdrawn, decided or otherwise terminated in accordance with this section, no proceedings shall occur at the Board with regard to such file.

(c) Whenever a Board member is disqualified pursuant to subsection (a) or (b) of this section, an alternate Board member, appointed pursuant to Section 31-237c of the Connecticut General Statutes and Section 31-237g-2(b) of these regulations, shall serve in place of such Board member.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-46. Extension of time to file written argument

(a) The Board lacks authority to waive or extend the statutory time limits for the filing of appeals or motions to the Board, and is furthermore obligated to adjudicate appeals promptly. However, after an appeal, motion, request or similar correspondence is timely filed to the Board, and before a decision upon such appeal, motion, request or correspondence is issued, the Board, on its own initiative, or upon the request from a party to such proceeding or the attorney or authorized agent for such party, may grant a limited extension of time in which to file further written argument on such appeal, motion, request or correspondence if the Board determines that good cause exists for granting such extension. Such requests need not be in writing, but shall explain all reasons alleged for the request and should state the proposed limit for the time extension requested. The decision on such request shall be recorded in the file record but need not otherwise be in writing.

(b) In the event that an extension request filed pursuant to subsection (a) above is granted, the party involved shall file such written argument in accordance with the provisions of Section 31-237g-10(a) of these regulations.

(c) Any request to supplement the record shall be governed by Section 31-237g-40(e) of these regulations.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-47. Review and decision by the Board

(a) If the Board determines that a hearing is necessary upon any appeal before the Board, such a hearing shall be scheduled and proceedings conducted in accordance with the provisions of Sections 31-237g-52–31-237g-60 of these regulations prior to the review and consideration of the appeal in accordance with subsection (b) through (d) of this section provided in any case before the Board, the Board may delegate to a Referee or other qualified employee of the appeals division the taking or hearing of evidence in accordance with the applicable provisions of these regulations.

(b) Any appeal, motion or request to the Board may be reviewed and considered by any member of the Board, provided the decision on each appeal, motion, or request to the Board shall, unless otherwise specified in these regulations, issue by a majority vote of the Board except that the full Board shall decide each appeal wherein a request for decision by the full Board was timely filed, or by statute, the full Board is required to decide such appeal. In any case before the Board, the Board or any of its members may have the assistance and advice of any Referee, legal intern, staff member, Staff Assistant, or any other person duly authorized by the Chairman except that no such person shall provide advice in any matter before the Board in which that person previously participated at the Referee level.

(c) Except as provided in Section 31-237g-41 and 31-237g-42 of these regulations, each appeal to the Board shall be reviewed in accordance with this section without undue delay following the expiration of time specifically allowed, pursuant to these regulations, for the exercise of rights concerning such appeal. Except as provided in subsection (d) below, each appeal shall be reviewed on the basis of the records in the appeal file including, but not limited to (1) the records obtained from the Administrator; (2) all appeals and accompanying materials filed with the Appeals Division; (3) all timely filed written arguments concerning such appeals; (4) all documents and exhibits admitted into evidence at a hearing before the Appeals Division. The Board's review, consideration and decision of an appeal need not, however, be limited to the issues or claims raised by the parties to such appeal.

(d) The tape or transcript of any hearing before the Referee on an appeal before the Board may be reviewed prior to the issuance of the Board's decision on such appeal, provided such tape or transcript of the Referee's hearing shall be reviewed prior to the issuance of the Board's decision on any appeal in which the appealing party alleges that a material question exists concerning the Referee's findings of fact or the procedural conduct of the hearing held before the Referee. In addition, if a hearing was held by a referee at the direction of the Board, the hearing record of such hearing and the record of any preceding hearing held by the Appeals Division on such appeal shall be reviewed prior to the issuance of the Board decision.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-48. Decision of the Board: content and form; remand to Administrator or Referee

(a) Each appeal to the Board shall be decided with reasonable promptness following

review. Except for a dismissal decision issued pursuant to Section 31-237g-41 or 31-237g-43, the Board's decision shall affirm, reverse, or modify the preceding decision or remand the case to the Referee or the Administrator for such further proceedings as the Board in such decision instructs. Upon such a remand to the Referee, unless otherwise specifically stated in the decision, the Board shall not retain jurisdiction of such appeal, and the rights and responsibilities attaching to the subsequent decision of the Referee shall be the rights and responsibilities normally applicable to such a decision. In remanding the case to the Administrator, the Board may retain jurisdiction. If the Board retains jurisdiction, upon the issuance of a new determination by the Administrator, the Board shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing, or modifying the Administrator's determination, provided that the Board shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Board does not retain jurisdiction, the administrator's determination shall inform the aggrieved party of its right to file a new appeal from the determination. The general provisions of Section 31-237g-49 (a) of these regulations to the contrary notwithstanding, a Board decision remanding an appeal to the Referee or the Administrator shall not be separately appealable to the Superior Court, but may be made an additional ground for appeal from the final decision of the Referee or the Board on the merits of the case. An aggrieved party may, however, file a motion to reopen a decision remanding an appeal to the Referee or the administrator. Where an appeal involves multiple issues, some of which are subject to the Board's order of remand and others of which have been finally resolved by the Board's decision, the aggrieved party does not waive its right to object to the Board's decision on the issues finally resolved and may raise any such objection in the event of further appeal to the Board from the Referee's decision on remand. Unless the Board specifically so directs, a decision of the Board remanding an appeal to the administrator or the Referee shall not automatically vacate the preceding decision of the Referee.

(b) Each Board decision on an appeal shall be prepared and issued in accordance with section 31-273g-13 of these regulations and shall also list the date and location of any hearings held by the Board together with the names and identities of all persons attending such hearing. Except as otherwise provided in Section 31-237g-41, 31-237g-11 (b) and 31-237g-43 of these regulations, each Board decision shall also include:

(1) a citation to the law involved;

(2) a case history summarizing the proceedings prior to the date of the Board's decision;

(3) a statement indicating whether the Board has reviewed the file record of such appeal;

(4) a statement indicating whether the Board reviewed the tape or transcript of the Referee's hearing prior to issuing the decision;

(5) the Board's decision on all timely-filed requests for a Board hearing on such appeal;

(6) a statement of the Board's findings of fact which may adopt the Referee's findings of fact;

(7) reasons for the Board's decision which shall address the legal and factual claims stated in the appeal, timely-filed written argument, and oral argument presented at any

hearing before the Board;

(8) citations to any specific precedents used to support the decision;

(9) the ultimate decision which may include a statement as to the action to be taken by the Administrator, if any, as a consequence of such ultimate decision;

(10) the signature, or reproduction thereof, of at least one member of the Board in favor of the decision and the name of each concurring member;

(11) a statement that the full Board reviewed and decided such appeal if request for decision by the full Board was timely-filed or by statute the full Board was otherwise required to review and decide such appeal.

(c) The Board's decision on an appeal may include any dissenting or concurring opinion which any member of the Board may wish to provide.

(d) If the Board determines that any appeal or motion to the Board was frivolous, the Board may in its decision on such appeal or motion, include a recommendation to the Administrator that, in the event of an appeal to Superior Court from such Board decision, the Administrator move the Court to rule such appeal to be frivolous and tax costs accordingly.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-49. Decision of the Board; final date; motions and appeal distinguished

(Statutory reference: 31-249a)

(a) The Board's decision on an appeal shall become final on the thirty-first (31st) calendar day after the date on which a copy of such decision was mailed to the parties unless, prior to said thirty-first day:

(1) a party aggrieved by the decision files (A) an appeal to the Superior Court on such decision, or (B) a motion to the Board to reopen, vacate, set aside or modify such decision; or

(2) the Board, on its own motion, reopens, vacates, sets aside or modifies such decision in accordance with the terms of Section 31- 237g-50 of these regulations.

(b) Every motion or appeal pursuant to this section shall be filed at any office of Employment Security, the Appeals Division, or any employment security office of any other state in which the filing party is located at the time of filing. Each such motion or appeal may be filed in person, by facsimile transmission (fax), by internet or by mail, but to be acceptable as timely-filed it must be actually received at such office within the thirty (30) calendar days allowed by law, must bear a legible United States postal service postmark which indicates that within such thirty-day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If the last day for filing such a motion or appeal falls on a day when the office where such appeal was actually filed was not open for business, such last day shall be extended to the next business day of such office. Any appeal or motion filed after the thirty

day period has expired may be considered timely if the filing party shows good cause for the late filing.

(c) A party has good cause for failing to file a motion to reopen within thirty (30) calendar days of the issuance of the Board's decision if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely motion to reopen. In determining whether good cause has been shown, the Board shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with the Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the Appeals Division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing a motion to reopen once the reason for the late filing no longer existed;

(ix) Where there is substantial prejudice to an adverse party which prevents such party from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its motion.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause the Board shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the motion is excessively late, and whether the party otherwise acted with due diligence.

(d) If a party alleges good cause for failing to file an appeal to the Superior Court within thirty (30) calendar days of the Board's decision, the Superior Court shall determine whether the appealing party has shown good cause by reference to the reasonably prudent individual standard contained in subsection (c) of this section together with all relevant factors pertaining to good cause, including but not limited to those factors cited therein. The Board, in certifying the record of proceedings to the Superior Court, shall include a proposed decision on the timeliness of any such appeal.

(e) An appeal to the Superior Court from the Board's decision on an appeal generally has consequences different from a motion to the Board to reopen, vacate, set aside or modify such a decision. An appeal to the Superior Court may, regardless of its title, be treated and processed by the Board as such a motion for purposes of granting the motion by way of reopening, vacating, setting aside, or modifying the Board's decision, solely in order to grant the relief requested. After an appeal to the Superior Court is processed as such an appeal, no motion to the Board to reopen, vacate, set aside, or modify the appealed decision shall thereafter be accepted or acted upon by the Board. After a motion to the Board to

reopen, vacate, set aside or modify the decision is filed with the Board, both a Board decision denying such a motion and the preceding Board decision on the appeal may be appealed to the Superior Court within thirty (30) days following the mailing date of the Board decision denying such motion. In the event that such a motion and an appeal are filed simultaneously, the Board shall accept and process whichever remedial petition it deems proper and the remaining petition shall, except as otherwise provided in these regulations, be void. Whenever possible, the Board shall treat and process an appeal or motion in such a way as to preserve the right of the appealing party to seek further review by the Superior Court.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-50. Motion to the Board to reopen, vacate, set aside, or modify; motion for articulation

(Statutory reference: 31-249a)

(a) The Board may reopen, vacate, set aside or modify a Board decision on an appeal if the Board determines, for good cause shown, that new evidence or the ends of justice so require. Each motion to reopen, vacate, set aside or modify a Board decision on an appeal shall be filed by means of a typed or legibly printed statement which should:

(1) be clearly entitled at the top center of the front page "Motion to the Board to reopen," "Motion to the Board to vacate," "Motion to the Board to set aside," or "Motion to the Board to modify," as the case may be, and otherwise comply with Section 31-237g-10(a) of these regulations;

(2) describe all reasons and good cause for such motion and, if new evidence is alleged as such a reason, the following should be further specified:

(A) the identity and nature of such alleged new evidence;

(B) the reason why such alleged new evidence was not presented at the hearing previously scheduled;

(C) the reason why such alleged new evidence is material to the case.

(b) Any such motion may be filed regarding the same Board decision by any party, but all such motions by such party shall be filed simultaneously and should be filed by means of separate documents and no such motion by any party shall be permitted or accepted by the Board with regard to the Board decision upon a preceding motion filed by such party. The Board may process any such subsequent motion as an appeal to the Superior Court.

(c) No hearing shall be held upon such motions unless the Board determines that good cause exists for such a hearing. The Board shall with reasonable promptness review each such motion and issue a written decision thereon. The Board's decision on any such motions shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations and shall include a statement as to the reasons for the decision. In any case wherein a further hearing is not scheduled as a consequence of a Board decision reopening, vacating, setting aside or modifying a Board decision, the Board shall provide all non-moving parties to such case with (1) a copy of such motion, together with all supplemental

documentation filed in support of such motion, and (2) a reasonable opportunity to file a written response to such motion prior to the Board's issuance of a new decision in the case.

(d) The Board may deny any such motion based upon the allegations of new evidence if the Board determines that the new evidence is unnecessarily duplicative or is not likely to affect the outcome of the case, or that the exercise of reasonable diligence by the moving party would have resulted in the presentation of such evidence at the hearing previously scheduled and the moving party does not otherwise show good cause for such party's failure to present such evidence.

(e) Any party aggrieved by a decision of the Board with regard to any such motion may appeal to Superior Court within thirty calendar days of the mailing of such decision as set forth in subsections (b), (c), and (d) of Section 31-237g-49.

(f) If the Board's decision is so imprecise, incomplete, ambiguous, or contradictory that the Board's ultimate decision, the extent of the relief granted, or the instructions for further proceedings upon remand cannot clearly be determined, any party or the Referee may file with the Board a motion for articulation of its decision. The Board's articulation shall set forth the original intention of the Board and shall not in any way alter the substance of the Board's original decision. An articulation by the Board is not a new decision and does not afford any party further right of appeal. Therefore, a party which is aggrieved by a decision of the Board and which wishes to have the substance of that decision changed should file a motion to the Board to reopen pursuant to Section 31-237g-50 of these regulations. A motion for articulation may by filed at any time, even after the Board's decision has become final.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-51. Appeal to Superior Court

(Statutory reference: 31-249b)

(a) Each appeal petition to the Superior Court from the Board's decision on an appeal shall be filed by the use, pursuant to the instruction contained thereon, of a form prescribed by the Board for such purpose and made available by the Administrator at each Employment Security office, or by means of a document which shall:

(1) state the grounds on which judicial review of the Board's decision is sought;

(2) consist of the original petition plus five (5) copies; and should

(3) be clearly entitled at the top center of the front page "appeal to superior court from decision of the employment security board of review" and otherwise prepared in accordance with Section 31-237g-10(a) of these regulations.

(b) Following the Board's receipt of such appeal, the Chairman shall, pursuant to the existing law, cause the original appeal petition and the appeal record to be certified to the appropriate Superior Court. Such record shall consist of all pertinent file records concerning such appeal including:

(1) the relevant Administrator's record in the file;

(2) all appeals and accompanying materials filed with the Appeals Division;

(3) all written notices and decisions of the Appeals Division;

(4) all written requests, motions, argument or material correspondence timely-filed or considered concerning such appeal;

(5) the Appeals Division record of oral requests, reports, notifications and decisions made pursuant to these regulations concerning such appeal;

(6) all documents and exhibits admitted into evidence by the Appeals Division;

(7) all other evidentiary material accepted by the Appeals Division.

(c) Each such certification to the Superior Court pursuant to subsection (b) above shall have, as a cover sheet, a notice of such certification which itemizes the appeal record thus certified. Such notice shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations and each copy of such notice mailed to the parties, attorneys and authorized agents of record shall include a copy of the appeal to the Superior Court.

(d) Any party who objects to the inclusion or exclusion of documents in the record certified to the Superior Court may file with the Board a request to correct the certification. The Board, upon notice to the parties, shall issue a written decision on such request and shall certify to the court the request, any objection to the request, the Board's decision, and any correction to the record originally certified.

(e) Upon request of the Superior Court, the Board shall prepare and certify to the Court a transcript of the hearing before the Referee and/or the Board, as the court may direct.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-51a. Motion to correct findings

(Statutory Reference: 31-249b; Practice Book Secs. 515A–518)

(a) A party seeking to have the findings of fact of the Board corrected must file a motion to correct findings of fact with the Board. Such motion must be filed within two weeks of the Board's filing of the record of an appeal to the Superior Court. A party may, within such two-week period, seek an extension of time for the filing of such a motion, and the Board shall grant an extension where the moving party indicates that it has filed with the Superior Court a request that the Board prepare a transcript of the hearings before the Referee and the Board or otherwise demonstrates good cause for its request. The Board shall deny an untimely request for an extension of time unless the moving party demonstrates good cause for failing to file its request within the two-week period. For purposes of this provision, good cause shall include such factors listed in Section 31-237g-49 of these regulations as may be relevant. The moving party should indicate in and attach to its motion such portions of the evidence, including relevant portions of the transcript, which support each correction sought.

(b) Upon receipt of a motion to correct findings, the Board shall provide each adverse party notice of the filing of the motion. Each adverse party shall have seven (7) calendar days from the mailing of the Board's notice in which to file with the Board objections to the motion to correct. Any objecting party may file with the Board additional evidence which it believes is relevant and material to the motion to correct.

(c) Upon expiration of the time provided for filing objections, the Board shall issue a

written decision on the motion to correct. The Board shall certify to the Court the motion, any objection thereto, and the Board's decision. If the Board denies the motion to correct in whole or in part, and the denial is made an additional ground of appeal to the Court, the Board shall certify to the Court all evidence and transcripts, not previously certified, which the Board deems relevant and material.

(d) Any party to the appeal may file claims of error concerning the Board's decision on a motion to correct the finding. Such claims shall be filed with the Court within two weeks from the date on which the Board's decision on the motion to correct was mailed to the party making the claim and shall contain a certification that a copy thereof has been served on the Board and on each other party to the appeal in accordance with Sec. 120 of the Practice Book.

The appellant shall include his or her claims of error in the appeal petition unless they are filed subsequent to the filing of that petition, in which case they shall be set forth in an amended petition.

(Effective January 1, 1988; Amended October 27, 1997)

Article IV

Hearings Before the Board

Sec. 31-237g-52. Scheduling; telephone hearings; notice of hearing

(Statutory reference: 31-244a, 31-249)

(a) If the Board determines that a hearing should be held by the Board, it shall promptly schedule such hearing at its office or such other location as the Board may deem appropriate, and at a date and time reasonable and suitable to the Board. In the scheduling of such hearings primary consideration shall be given to the goal of prompt disposition of appeals, the normal hours, days of the week and locations established for conducting such hearings, and the administrative limitations and needs of the Board, but hearings may be scheduled at such times, dates, places and in such manner as the Board deems necessary to give each party a reasonable opportunity for a fair hearing. Hearings before the Board may be scheduled and conducted for such limited purposes as the Board may direct, and the Board may limit the hearing exclusively to oral argument.

(b) To the extent practicable and reasonable under the circumstances of each intrastate appeal, in-person hearings, whereby all parties and witnesses are expected to be physically present at the same hearing location, shall be the preferred manner of scheduling and conducting intrastate hearings, but the Board may, on the initiative of the Board or upon the timely request of a party made prior to the hearing which shows good cause therefor, make arrangements for conducting a telephone hearing on an intrastate appeal whereby the testimony of some or all of the parties and witnesses is taken by telephone, subject to the availability of sufficient telephone lines at the hearing location. If, during the course of the hearing, the board determines that the ends of justice so require, the board may take the testimony of any witness not present at the hearing by telephone. For purposes of this

section, good cause includes but is not limited to:

(i) excessive distance to the hearing location.

(ii) physical disability.

(iii) transportation difficulties.

(iv) security concerns.

(v) The need for multiple witnesses, especially where the requesting party would be unfairly burdened or where a particular witness is only needed for a discrete issue.

(vi) Testimony will be taken only on a procedural issue or issue of marginal relevance.

(vii) A party has previously suffered extreme inconvenience in connection with the scheduling of the hearing.

In any circumstances in which a party would be entitled to a postponement, the appeals division shall not deny the party the right to participate by telephone unless it offers the party a postponement.

(c) To the extent practicable and reasonable under the circumstances of each interstate appeal, telephone hearings shall be the preferred manner of scheduling and conducting interstate appeal hearings provided that any party to the appeal or its attorney or authorized agent may, after providing notice to the board, appear in person at the hearing on the appeal.

(d) Written notice of the day, date, time, manner and location of each hearing scheduled by the Board shall be mailed to each party, and the attorney or authorized agent of record for such party, not less than five (5) days prior to the scheduled hearing date, provided the parties may waive such notice or agree to a shorter period of time in advance of hearing for receiving such notice. Each such written notice shall:

(1) be prepared in accordance with Section 31-237g-13(a) of these regulations;

(2) list the telephone number of the Appeals Division office which issued the notice;

(3) contain, or be accompanied by, a written statement as to the purpose of the hearing and the basic rights and responsibilities of the parties pursuant to these regulations concerning such hearing;

(4) provide notice of the issues which may be covered at such hearing and the sections of the Connecticut General Statutes or other law relating to such issue including a statement as to the legal authority and jurisdiction under which the hearing is to be held;

(5) in the case of a telephone hearing, be accompanied by clearly identified copies of all pertinent Appeals Division records concerning such appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-53. Rescheduling; postponements

(a) A hearing scheduled by the Board may, for good cause, be rescheduled to another date, time or location at the initiative of the Board or upon the request of a party or the attorney or authorized agent for such party, which reveals good cause for such request. Such a request need not be in writing but shall be promptly made as far as possible in advance of the hearing and shall describe the good cause alleged for the request. Such a request should be made to the office which issued the notice of hearing. The Board may request that the

reasons given in oral rescheduling requests be subsequently confirmed in writing or sworn affidavit by the party, attorney or authorized agent who made the request. The Board shall, with regard to each such rescheduling request, promptly decide upon the request and record the following in the appeal file: (1) the person making such request; (2) the party on whose behalf the request was made; (3) the date and time such request was received; (4) the good cause alleged for such request; (5) the decision upon such request and the reasons therefor; (6) the manner in which such decision was conveyed to the requesting party; and (7) the name of the Appeals Division staff member involved with such communication. The Board may deny any request that is not based upon good cause or that is not timely made. The Board decision denying such a rescheduling request need not otherwise be in writing.

(b) Upon granting any such rescheduling request, the Board shall:

(1) promptly make a reasonable effort to verbally notify each party, and attorney or authorized agent of record for such party, as to the rescheduling if it is reasonable to assume that mailed written notice of such rescheduling would not timely arrive, and record the date and time of such notification and the person to whom such notification was conveyed; and

(2) confirm such rescheduling with a written notice of rescheduling which shall be sent to all parties and list the following information: the party who made the request, the good cause alleged for the request, and, if known, the new day, date, time and place for the rescheduled hearing; if such notice indicates the new day, date, time and place of such hearing, such notice shall be in lieu of reissued notice otherwise required by Section 31-237g-52 of these regulations.

(c) Any party aggrieved by the Board's decision on a rescheduling request may petition for review of such decision but only as a part of any subsequent petition which addresses the Board's eventual decision on the appeal by way of either an appeal to Superior Court or a motion to the Board to reopen, vacate, set aside or modify.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-54. Subpoenas

(Statutory reference: 31-245, 31-246, 31-247)

(a) The Chairman may, at his own initiative, upon the request of either of the other two Board members, or at the request of a party filed pursuant to this section, issue subpoenas to compel the attendance of witnesses at any hearing before the Board for the purpose of providing testimony or physical evidence, or both, if the Chairman determines that the issuance of such subpoena is necessary to fairly adjudicate the appeal, provided the Chairman shall in no event be required to issue a subpoena if the Chairman determines that the issuance of same would constitute an abuse of process or be otherwise improper. Service of such subpoenas shall be made in accordance with Connecticut law and, unless otherwise arranged with the requesting party, the Board shall take responsibility for service of each subpoena issued by the Chairman. If a Referee is delegated to conduct a Board hearing, the Referee shall have such subpoena authority with regard to such hearing as is set forth in Section 31-237g-21 of these regulations.

(b) Any party may request the Chairman to issue a subpoena to compel the attendance at the hearing of any proposed witness for the purpose of providing testimony or physical evidence, or both. Such a request need not be in writing, but shall be promptly made as far as possible in advance of the scheduled hearing. In the absence of a properly issued subpoena, attendance at a Board hearing by any party or other person is not mandatory and therefore it is the responsibility of each party which intends or desires to examine or cross-examine any other party or person to request the issuance of a subpoena to insure the attendance of such other party or person at the Board's hearing. The Chairman may require that the reasons given in oral subpoena requests be subsequently confirmed in writing or sworn affidavit by the party, attorney, or authorized agent who made the request.

Each request should:

(1) reveal the name of each such witness and the location, or locations, where each witness can be served;

(2) identify and describe all physical evidence requested and indicate why it is believed that the witness in question has control of such material;

(3) explain why each witness and item of physical evidence is necessary to the Board's adjudication of the appeal;

(4) indicate why such witness or physical evidence will be unavailable unless the requested subpoena is issued by the Chairman.

(c) The Chairman shall promptly decide such subpoena requests and notify the requesting party of the decision. Notice of such decision need not be in writing, but such notification shall be recorded in the appeal file. The Appeals Division may discuss such request with the opposing party or the proposed witness, or both, for purposes of obtaining the attendance of such proposed witness at the hearing by stipulation in lieu of subpoena. The Chairman may refuse to grant a request for issuance of such a subpoena from a party that is, at the time such request is made, represented by an attorney with independent subpoena authority sufficient to issue such a subpoena. Any party aggrieved by the Chairman's decision on a subpoena request may petition for review of such decision, but only as a part of any subsequent petition which addresses the Board's eventual decision on the appeal by way of either an appeal to Superior Court or a motion to the Board to reopen, vacate, set aside or modify.

(d) If any person refuses to obey a subpoena issued by the Board the Chairman may request the Attorney General to make application to the Superior Court for an order requiring such person to appear before the Board to provide testimony or the physical evidence question.

(e) Subject to the approval of the Chairman, witnesses appearing before the Board pursuant to a subpoena issued by the Chairman pursuant to this section shall be allowed fees as provided by Connecticut Law in civil actions.

(f) If the Chairman determines that the fair adjudication of an appeal before the Board requires the issuance of a subpoena in a jurisdiction beyond Connecticut, the Chairman shall thereupon request the appropriate authorities of said jurisdiction to either issue such

subpoena or take such other action as will reasonably resolve the need for same.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-55. Failure to timely appear at hearing

(a) A party shall be deemed to have failed to timely appear at a scheduled hearing before the Board when such party fails to appear at the location of the hearing within 10 minutes of the scheduled time for such hearing. For purposes of this section, a party to a telephone hearing shall appear by telephoning the designated Appeals Division telephone hearing number within ten (10) minutes of the scheduled time for such hearing unless such party otherwise appears in person at the Appeals Division office conducting such hearing. A party may be deemed to have appeared if an attorney, authorized agent or witness appears on behalf of such party within such 10 minutes. Unless otherwise stipulated with the consent of the Board, the watch or timepiece of the Chairman, or the person to whom the Chairman has pursuant to these regulations delegated the authority to conduct the hearing, shall be the sole instrument by which timely appearance at the hearing is determined.

(b) If any party fails to appear the Board may:

(1) proceed with the hearing and take the evidence and argument put forward by the parties present; or

(2) reschedule or continue the hearing if the Board reasonably determines that good cause exists for doing so, which good cause may include but need not be limited to defective notice of hearing; or

(3) decide the case on the basis of the existing record without proceeding with the hearing except that if the appearing party shows good cause for proceeding with the hearing, the Board shall take the evidence and argument put forward by the parties present.

(c) When any party, attorney or authorized agent realizes that such party, attorney or agent will likely be unable to timely appear at a scheduled hearing before the Board, it is the responsibility of such party, attorney or agent to immediately report such fact, and the reason therefor, to the office of the Board. The Appeals Division shall record such report and the time it was received, in the file of such case. Such report shall be part of the record of the case. The Board may refuse to grant a motion to reopen, vacate, set aside or modify filed on behalf of any party which failed to timely reveal good cause for the failure of such party, or that party's representative, to timely appear at the scheduled hearing or to give timely notice to the Appeals Division of its inability to appear.

(d) When any party, attorney, authorized agent or witness presents himself to the Board at the location of a scheduled hearing at a time subsequent to the disposition of that hearing, the Board shall record in the file of such case the time and reason given, if any, for such late arrival.

(e) For purposes of this section, good cause shall include such factors listed in section 31-237g-34 of these regulations as may be relevant to a party's failure to appear.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-56. Responsibility of party to present testimony and evidence

(a) Subject to the Board's right to determine the scope of the hearing and to control the admission of testimony and evidence, it is the responsibility of each party to present at the hearing before the Board all witnesses, testimony, evidence, and argument material to such party's contentions concerning the appeal. Testimony and evidence personally presented at the hearing by individuals with actual personal knowledge of the facts in question is preferred, provided the weight to be accorded such testimony and evidence shall be determined by the Board with consideration to the circumstances of each appeal. Any party, who, without good cause, fails to present at the hearing all testimony, evidence and oral argument material to such party's contentions concerning the appeal may be deemed to have assented to the Board's decision of the appeal solely on the basis of the credible testimony, evidence and oral argument presented at such hearing and the records already on file. The Board may refuse to provide, by reopening, remand or otherwise, a further hearing for purposes of presenting testimony, evidence or oral argument not presented at the Board's hearing duly scheduled in any case wherein it is determined that, through the exercise of due diligence by the party involved, such testimony, evidence or argument could have been presented at such hearing and there was no good cause for such party's failure to do so.

(b) Immediately upon receipt of the written notice of a telephone hearing, it shall be the responsibility of each party to such telephone hearing, in addition to the other responsibilities applicable to the hearing, to:

(1) pursuant to the provisions of Section 31-237g-10(a) of these regulations, mail directly to the Appeals Division office which issued the notice, all proposed documentary evidence or written materials which such party wishes to introduce during such hearing;

(2) Pursuant to Section 31-237g-52(c) notify the Board if it intends to appear in person;

(3) arrange to have all witnesses that such party intends to introduce at such hearing present at either (A) the Appeals Division office conducting the hearing, or (B) the location where such party will be participating by telephone in the hearing, or (C) such location as the notice directs will be acceptable;

(4) contact the Appeals Division office which issued the notice if such party is unable to satisfactorily arrange to have that party's witnesses at any of the locations specified in subsection (3) above.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-57. Responsibility of party to provide interpreter

(Statutory reference: 17-137k, 17-137p)

(a) Except as hereinafter provided in subsection (b), if any party or witness that such party expects to present at a hearing before the Board cannot adequately speak or understand spoken English, it shall be the responsibility of such party to provide at the hearing, at such party's own expense, a proficient interpreter who is capable of completely and accurately interpreting for such person. The Board may refuse to permit or consider testimony from any person who cannot adequately speak or understand spoken English and for whom a

capable interpreter has not been supplied.

(b) If a deaf person is involved in any hearing before the Board and a capable interpreter for such person is not otherwise supplied, the Board shall request the Commission on the Deaf and Hearing Impaired to appoint a qualified interpreter for such deaf person. The Appeals Division shall reimburse the Commission on the Deaf and Hearing Impaired for the actual cost, including travel expenses, of any interpreter so supplied.

(c) The Board may refuse to accept or consider, as evidence, any document written in a language other than English unless such document is interpreted at the hearing by an acceptable interpreter or it is accompanied by a correct English translation with proof satisfactory to the Board that such translation is a correct translation of the original document.

(Effective January 1, 1988)

Sec. 31-237g-58. Hearing record

(Statutory reference: 31-244a)

(a) The Board shall prepare or arrange to have prepared, by cassette tape recording or other means susceptible to transcription, a complete hearing record of all proceedings at any hearing before the Board. Such hearing record shall be the official hearing record.

(b) Any party or witness at a hearing before the Board may arrange for the preparation of a private record of such hearing provided:

(1) the Chairman may at any time refuse to permit or may order such person to discontinue the preparation of such private record if the Chairman deems the preparation of such private record to limit the fairness or effectiveness of the hearing on the condition that the Chairman state on the record the Chairman's reasons for such order;

(2) such private record of the hearing may not, except upon the stipulation of all parties and the consent of the Chairman, be allowed to contravene, supplement or otherwise affect the official hearing record prepared by the Board.

(c) The Chairman may permit limited discussions to occur off the hearing record for good cause. If the Chairman permits any such proceedings to occur off the record, the Chairman shall, prior to going off the record, announce such fact, including the reason therefor, and immediately upon thereafter resuming proceedings on the record the Chairman shall summarize the essentials of such off-the-record discussions. For purposes of this section the term Chairman shall include any person to whom the Chairman has, pursuant to these regulations, delegated the authority to conduct the hearing.

(Effective June 23, 1986)

Sec. 31-237g-59. Rights of parties at hearings

Subject to the authority and control of the Chairman, such rights otherwise provided in these regulations, and the limited purposes for which the hearing may be scheduled, parties to a hearing before the Board shall have the right to:

(a) present a brief opening statement as to such party's position concerning such appeal;

(b) testify on any matter relevant and material to the issues involved;

(c) introduce evidence and exhibits relevant and material to the issues involved, provided that the provisions of these regulations concerning telephone hearings shall govern the introduction of documentary evidence at such a telephone hearing;

(d) call and examine any party or witness on any matter relevant and material to the issues involved;

(e) cross-examine any opposing party or witness on any matter relevant and material to the issues involved even if such matter was not covered in direct examination of such party or witness;

(f) impeach any party;

(g) impeach any witness regardless of which party first called such witness to testify;

(h) object to questions, the introduction of evidence, or the conduct of the hearing, provided the reason for any such objection is specified at the time of the objection;

(i) rebut the evidence and testimony against such party;

(j) present oral argument on the issues involved;

(k) briefly summarize such party's position concerning the appeal at the conclusion of testimony. For purposes of this section, the term Chairman shall include any person to whom the Chairman has, pursuant to these regulations, delegated the authority to conduct the hearing.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-60. Conduct of hearing

(Statutory reference: 31-245)

(a) The Chairman shall conduct and control the meeting. For purposes of this section the term Chairman shall include any person to whom the Chairman has, pursuant to these regulations, delegated the authority to conduct the hearing. The Board shall not be bound by the ordinary common law or statutory rules of evidence or procedure. Subject to the purposes of the hearing, the Board shall make inquiry in such manner, through oral testimony and written and printed records, and take any action consistent with the impartial discharge of its duties, as is best calculated to ascertain the relevant facts and the substantial rights of the parties, furnish a fair and expeditious hearing, and render a proper and complete decision. Subject to the Chairman's control of the hearing, the Board may, at any time, examine or cross-examine any party or witness, and require such evidence as the Board determines to be necessary for a proper and complete decision. The Chairman may, at any time, indicate on the record that the testimony being presented is not being supplied by a person with actual personal knowledge of the facts in question. Subject to the Chairman's control of the hearing, the Staff Assistant or other legal staff of the board may participate in the hearing. The Chairman shall determine the order for presentation of evidence, and he may exclude testimony and evidence which he determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper. When a party is not represented by an attorney, the Chairman shall, as he deems necessary in the interests of justice, advise such party as

to his rights, aid him in examining and cross-examining witnesses, help him in presenting evidence, and otherwise render such assistance as is compatible with the impartial discharge of the Chairman's duties.

(b) The Chairman has authority to administer oaths and affirmations. All testimony at the hearing before the Board shall be under oath or affirmation which shall be included on the hearing record. Any interpreter participating in such hearing shall so interpret under the separate oath for interpreters which shall also be included on the hearing record. Upon administering such oath or affirmation, the Chairman may require the interpreter to interpret, to the extent possible, word for word in the first person as the person being interpreted for so communicates.

(c) The hearing shall be confined to the purposes and issues listed on the notice of hearing issued pursuant to Section 31-237g-52(e) of these regulations. The hearing may also cover, at the discretion of the Chairman, any separate issue which the parties are prepared and willing to go forward on and on which they expressly waive right to notice of.

(d) At the commencement of the hearing the Chairman shall, on the hearing record:

(1) announce the title and case number of the appeal;

(2) announce the commencement time, date and location of the hearing;

(3) announce the identity of the Board and staff members present;

(4) identify all parties, representatives and witnesses present, indicate on whose behalf each such representative or witness is appearing, and verify the mailing addresses of all such parties and representatives;

(5) explain the procedure to be followed at the hearing, including an advisement as to the Chairman's full authority over the conduct of the hearing;

(6) indicate that the hearing will be taped and that the official record thus obtained will be kept during the pendency of the appeal;

(7) summarize the rights and responsibilities of the parties at the hearing pursuant to these regulations;

(8) indicate that a written decision upon the appeal will be mailed by the Board to all parties and representatives with reasonable promptness following the close of the hearing and advise the parties as to the appeal rights of any party aggrieved by such decision;

(9) advise the claimant to continue to file benefit claims as instructed by the Administrator in order to preserve the claimant's rights during the pendency of the appeal;

(10) summarize the case history of the appeal and indicate the issues which appear to be involved.

(11) announce that the Board has statutory power to authorize and limit the fees payable for representation of a claimant in such proceedings and that if either the claimant or such representative requests, the Board shall rule on that matter.

(e) The Chairman shall itemize and summarize the records on file concerning such appeal, and allow the parties, and the attorneys and authorized agents for such parties, to inspect such documents and offer evidence and testimony in rebuttal to the information or contentions contained in those documents. All documents and records which the Chairman

accepts into evidence shall be clearly and separately labeled by the Chairman to indicate the party submitting same and shall be included in the file record. Documentary evidence may be received in the form of legible photocopies. Physical evidence shall also be labeled and placed in the file record if practicable, or otherwise described in detail by the Chairman on the hearing record. Any party which seeks to introduce at hearing documents, records or other written evidentiary materials should, at the time of introduction, supply each other party and each member of the Board with a copy of such written material.

(f) Hearings shall be open to the public unless, consistent with the Freedom of Information Act and other applicable provisions of the Connecticut General Statutes, the Chairman finds sufficient cause for a closed hearing. The Chairman may sequester a witness from the hearing room if the Chairman deems such sequestration to promote the effective conduct of the hearing. Whenever the hearing is closed or reopened to the public, or a witness is excluded or readmitted to the hearing room, the Chairman shall so indicate upon the hearing record along with the Chairman's reason for such action. If a party, attorney or authorized agent, appears at the hearing after the commencement of the hearing the Chairman shall note the time of the late arrival, and may summarize the proceedings up to that point before proceeding with the hearing.

(g) The Chairman shall not permit improper behavior or tactics, including the intentional disregard of these regulations or the proper instructions of the Chairman, which are disruptive to the fair, orderly or effective conduct of the hearing. Any person, attorney or authorized agent other than a party who engages in such improper conduct shall be warned by the Chairman, on the hearing record, against continued such behavior and if such person thereafter persists in such proscribed conduct the Chairman may, if the Chairman deems it necessary, expel such person from the hearing. Any party that engages in such improper conduct shall be warned by the Chairman, on the hearing record, against continued such behavior and if such party thereafter persists in such behavior the Chairman may, if the Chairman deems it necessary, (1) proceed with the hearing under such instructions and conditions as the Chairman deems fair and appropriate; (2) recess or reschedule the hearing; or (3) close the hearing and issue a decision based upon the testimony and evidence received.

(h) A hearing before the Chairman may, at the initiative of the Chairman, or the oral or written request of a party, be briefly recessed or continued to another time, date, or place if the Chairman determines that good cause exists for such recess or continuance. Such good cause shall be stated on the record. Unless waived by all parties present, notice of a continuance shall be issued by the Board pursuant to Section 31-237g-52 of these regulations.

(i) The Chairman may permit any party, or the attorney or authorized agent of record for such party, to file with the Board at the hearing written argument concerning such appeal provided a copy of such argument is delivered to each other party present at such hearing. Such written argument may supplement but not serve in lieu of testimony and evidence presented under oath at the hearing duly scheduled upon an appeal, and in no case will evidentiary allegations contained in such written argument be considered or treated by the

Board in the same fashion as such testimony or evidence of record.

(j) At the conclusion of the hearing the Chairman shall announce on the record both the fact and time of such conclusion. The Chairman may, prior to such conclusion, at the Chairman's own initiative or upon the request of a party for good cause shown, on the record grant a limited extension of time, prior to the issuance of the Board's decision, for the filing by a party of additional documents or written argument provided the significance and identity of such documents are described at the time of the granting of such extension and each other party present is advised of its right to request a reasonable amount of time following the submittal of such documents in which to file a written rebuttal. Any such party which requests such opportunity for rebuttal shall be permitted a reasonable amount of time, as determined by the Chairman, to do so. All such written materials thereafter filed following the hearing should be filed in accordance with Section 31-237g-10 (a) of these regulations or as the Chairman prescribes.

(k) Telephone hearings shall be conducted in accordance with the provisions of the subsections above, provided that the Chairman shall also determine, at the commencement of the hearing, if the Appeals Division and each party, attorney or authorized agent in attendance has received copies of the file records supplied by the Appeals Division and all documentary evidence and materials supplied by any party. If any party seeks to introduce at such telephone hearing any documentary evidence or material which the Appeals Division or any other party has not, at the time of the hearing, yet received a copy, the Chairman may require a specific identification of such material and an explanation of the alleged importance of such documentary evidence or material to the appeal involved. If as a result of such explanation the Chairman determines that such material is important to the appeal the Chairman may: (1) if practicable, permit such documentary evidence or material to be read into the record provided that, pursuant to the provisions of Section 31-237g-10 (a) such documentary evidence or material shall thereafter be filed with the Board and the other parties in accordance with the time limitation that the Chairman may reasonably direct; (2) if the Chairman deems it necessary, take such other action as the Chairman deems appropriate. Any party who takes exception to such written materials filed after the hearing and is aggrieved by the Board's subsequent decision on the appeal may file, pursuant to Section 31-237g-50 of these regulations, a motion to reopen, vacate or set aside such decision for purposes of requesting the opportunity to file other written materials in rebuttal or the opportunity for a further hearing on the matter.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-61—31-237g-100. Reserved

Rules of Procedure for Declaratory Ruling

Sec. 31-237g-101. Definitions

For purposes of sections 31-237g-101 through 31-237g-107:

(a) "Administrator" means the Commissioner of Labor, whose address is 200 Folly

Brook Boulevard, Wethersfield, Connecticut 06109, and his/her designated representatives.

(b) "Appeals Division" means the Employment Security Appeals Division of the Connecticut Labor Department, consisting of the Board of Review, the Referee Section, and all support staff employed in the Appeals Division for discharge of the Appeals Divisions' responsibilities as set forth in chapter 567 of the Connecticut General Statutes.

(c) "Authorized agent" means any person who is, pursuant to section 31-237g-11 (b) of the Regulations of Connecticut State Agencies, duly authorized by a party to represent such party in a proceeding before the Appeals Division.

(d) "Board" means the Employment Security Board of Review.

(e) "Chairman" means the Chairman of the Employment Security Board of Review, whose address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109.

(f) "Contested case" means a proceeding, in which the legal rights, duties or privileges of a party are required by statute to be determined by the Board after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176 of the Connecticut General Statutes or hearings referred to in section 4-168 of the Connecticut General Statutes. Any matter which may come before the Appeals Division under chapter 567 of the Connecticut General Statutes, including matters brought pursuant to section 31-237j (a) of the Connecticut General Statutes, is a contested case.

(g) "Intervenor" means a person, other than a party, granted status as an intervenor by the Board in accordance with the provisions of sections 4-176 (d) or 4-177a (b) of the Connecticut General Statutes and section 31-237g-105 (d) of these regulations.

(h) "Party" means each person (A) whose legal rights, duties or privileges are required by statute to be determined by the Board and who is named or admitted as a party, (B) who is required by law to be a party in a Board proceeding, or (C) who is granted status as a party in accordance with the provisions section 4-177a (a) of the Connecticut General Statutes and section 31-237g-105 (c) of these regulations. The Administrator is a party to any proceeding before the Board.

(i) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character, but does not include the Board of Review.

(j) "Referee" means an Employment Security Appeals Referee.

(Effective March 30, 1990)

Sec. 31-237g-102. Scope of regulations on declaratory rulings

(a) **Appropriate Subjects for Declaratory Rulings**.

Sections 31-237g-101 to 31-237g-107, inclusive, set forth the rules of the Employment Security Board of Review governing the form and content of petitions for declaratory rulings and agency proceedings on such petitions. Petitions for declaratory rulings may be filed as to: (1) the validity of any regulation, or (2) the applicability to specified circumstances of a provision of the Connecticut General Statutes, a regulation, or a final decision on a matter

within the jurisdiction of the Board. Any petition for a declaratory ruling not addressed to one of these two categories will be rejected in writing by the Board as not being the proper subject for a declaratory ruling.

(b) **When Declaratory Rulings not Favored.** The Board of Review may, in its discretion, issue a declaratory ruling regarding the applicability of a statute, regulation, or final decision to specified circumstances. However, such declaratory rulings are generally not appropriate because of their impact on the adjudication process and thus are disfavored. In those instances in which a declaratory ruling is appropriate, a ruling by the Administrator rather than the Board may be less disruptive of the adjudicatory process and may provide an adequate remedy. Before deciding to issue a declaratory ruling, the Board will consult with the Administrator about the appropriate agency to issue the ruling. If the Board decides to issue a declaratory ruling, the Administrator shall be a party to the proceeding since its interests will be affected by any declaratory ruling issued.

(c) **Declaratory Rulings on the Board's Initiative.** The Board of Review may, on its own initiative, decide to issue a declaratory ruling. Notice of the Board's intent will be provided to those persons identified in section 31-237g-104 (a) of these regulations.

(Effective March 30, 1990)

Sec. 31-237g-103. Form and content of petitions

(a) **General.** All petitions for declaratory rulings must be addressed to the Board of Review and either mailed or hand delivered to the Board's office. All petitions must be signed by the person filing the petition, unless represented by an attorney or authorized agent, in which case the agent or attorney may sign the petition. The petition must include the address and telephone number of the person filing the petition and of the agent or attorney, if applicable.

(b) **Petitions on Validity of Regulations.** A petition for a declaratory ruling on the validity of a regulation must contain the following:

(1) the section number and text of the regulation;

(2) the specific basis for the claim of invalidity of the regulation;

(3) any argument by the petitioner in support of the claim of invalidity, with a suggested remedy;

(4) a detailed statement addressing the factors listed in section 31-237g-107 (b) of these regulations; and

(5) a statement of the reason the petition is filed with the Board of Review. Any petition which merely requests a ruling on the validity of the regulation but which does not contain a detailed claim of invalidity, will be rejected by the Board as incomplete.

(c) **Petitions on Applicability of Statute, Regulation, or Final Decision to Specified Circumstances.** A petition seeking a declaratory ruling on the applicability of a statute, regulation, or final decision on a matter within the jurisdiction of the Board to specified circumstances must contain the following:

(1) the specific statute, regulation, or final decision upon which the ruling is sought;

(2) a brief explanation of why the particular statute, regulation, or final decision is within the jurisdiction of the Board;

(3) a statement of the reason the petition was filed with the Board rather than the Administrator;

(4) a detailed description of the specified circumstances upon which the petition is based;

(5) any argument by the petitioner as to why the particular statute, regulation, or final order either is or is not applicable to the specified circumstances; and

(6) a detailed statement addressing the factors listed in section 31-237g-107 (b) of these regulations.

Any petition failing to identify the statute, regulation or final decision in question or failing adequately to describe the specified circumstances will be rejected by the Board as incomplete.

(d) **Notice by Petitioner.** The petitioner, or his authorized agent or attorney, shall append to the petition for a declaratory ruling a listing of all persons, with addresses and telephone numbers, who may have an interest in the declaratory ruling sought to be issued and shall mail a copy of the petition to all such persons. The petitioner or his agent or attorney must certify that a copy of the petition was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings on this petition, or receive notice of such proceedings or the declaratory ruling issued as a result of this petition, you should contact the Board of Review within thirty (30) days of the date of this petition."

(Effective March 30, 1990)

Sec. 31-237g-104. Notice by board of receipt of petition

(a) **Persons to Receive Notice.** In addition to the notice required to be given by the petitioner in section 31-237g-103 (d) of these regulations, the Board shall, within thirty (30) days after the receipt of such petition, provide written notice of the filing of the petition (1) to all persons required by law to receive notice, (2) to all persons who have requested notice of the filing of such petitions on the subject matter of the petition, (3) to all persons who have requested notice of the filing of any petitions with the agency, (4) the petitioner and (5) the Administrator. The notice required by this section shall not be required where the agency has rejected the filing of a petition as inappropriate or incomplete in accordance with section 31-237g-102 or subsections (b) or (c) of section 31-237g-103 of these regulations. If the Board initiates a declaratory ruling proceeding, notice containing the specific statute, regulation, or final decision and the issue under consideration will be given to the persons indicated above.

(b) **Content of Notice.** The notice issued by the Board will advise recipients that a person may file a motion to become a party or intervenor within forty-five (45) days of the date of filing of the petition. If a motion sets forth facts demonstrating that the proposed party satisfies the requirements of section 31-237g-105 (c) of these regulations, the Board may grant the motion to become a party. If the motion satisfies the requirements of section 31-237g-105 (d) of these regulations, the Board may grant intervenor status. The notice will

contain a statement that, within ten (10) days of the issuance of the Board's notice, a party or intervenor may request a hearing on the subject matter of the petition for a declaratory ruling. Such a request should describe the evidence or argument proposed to be introduced into the record and should explain the significance of such evidence or argument to the proceeding. The notice will also provide that any party or intervenor will have ten (10) days following the issuance of the notice to submit written argument. Any party or intervenor may request an extension of the time for filing written argument or request additional time in which to file a rebuttal. Argument filed beyond the time allowed will be considered if it is possible to do so before the Board issues its decision.

(Effective March 30, 1990)

Sec. 31-237g-105. Procedural rights of persons with respect to declaratory rulings

(a) **Petitioner as Party.** The petitioner is automatically a party to any proceeding on the petition by virtue of having filed the petition and need not seek designation as a party from the Board.

(b) **Administrator as Party.** The Administrator is automatically a party to any declaratory ruling proceeding before the Board and need not seek designation as a party from the Board.

(c) **Additional Parties.** Any person, whether or not in receipt of notice of the petition, may file a motion to become a party within forty-five (45) days from the date of filing of the petition. If the motion to become a party sets forth facts demonstrating that the person's legal rights, duties or privileges will be specifically affected by the declaratory ruling to be issued, the Board may grant the motion and designate the person as a party. The Board will issue a ruling on such motion to the person filing the motion, the parties, and any intervenors. A copy of the notice provided in section 31-237g-104 (a) of these regulations will be included with any ruling granting a person the status of a party. Pursuant to section 31-237g-104 (b) of these regulations, persons granted the status of a party are entitled to request a hearing and to submit written argument.

(d) **Intervenors.** Any person, whether or not in receipt of notice of the petition, may file a motion to become an intervenor within forty-five (45) days from the date of filing of the petition. If the motion sets forth facts demonstrating that the proposed intervenor's participation is in the interest of justice and will not disrupt the orderly conduct of the proceedings, the agency may grant the motion and designate the person as an intervenor. In addition, any person whose motion for designation as a party is denied may be granted intervenor status if the granting of such status is in the interest of justice and will not disrupt the orderly conduct of the proceedings. The Board will issue a ruling on such motion to the person filing the motion, the parties, and any intervenors. A copy of the notice provided in section 31-237g-104 (a) of these regulations will be included with any ruling granting a person the status of intervenor. Pursuant to section 31-237g-104 (b) of these regulations, persons designated as intervenors are entitled to submit written argument or request a hearing. The Chairman may restrict the rights of an intervenor in the proceeding so as to

promote the orderly conduct of the proceeding.

(Effective March 30, 1990)

Sec. 31-237g-106. Board proceedings on petition

(a) **Board Action.** Within sixty (60) days after the filing of a complete petition for a declaratory ruling, but, in any case, no sooner than thirty (30) days after the filing of the petition, the Board shall do one of the following, in writing:

(1) issue a declaratory ruling, in accordance with the request in the petition, containing the names of all parties to and intervenors in the proceeding, the particular facts upon which the ruling is based, and the reasons for the conclusions contained therein;

(2) order that the matter be the subject of a hearing as a contested case;

(3) notify the parties and intervenors that a declaratory ruling will be issued by a date certain;

(4) decide not to issue a declaratory ruling and initiate regulation making proceedings; or

(5) decide not to issue a declaratory ruling, stating the reasons for its action.

(b) **Notice.** A copy of the Board's action taken in accordance with subsection (a) of this section shall be delivered to the petitioner and all other parties either in person or by United States mail, certified or registered, postage prepaid, return receipt requested. Copies of the Board's action will be sent to any intervenor by first class mail.

(c) **Hearing.** Notice of a hearing ordered pursuant to subdivision (2) of subsection (a) of this section shall be given to parties and intervenors in accordance with the application procedures set forth in section 31-237g-52 of the Regulations of Connecticut State Agencies. The hearing will be conducted in accordance with the applicable procedures set forth in section 31-237g-44 and section 31-237g-54 through section 31-237g-60 of the Regulations of Connecticut State Agencies. The chairman may limit the participation of any intervenor in the hearing.

(d) **Record.** The Board will keep a record of the proceedings, which shall include:

(1) written notices related to the case;

(2) all petitions, pleadings, motions, argument, and intermediate rulings;

(3) evidence received or considered;

(4) the official tape recording of any hearing, including any objections, rulings, and offers of proof; and

(5) the final decision.

(Effective March 30, 1990)

Sec. 31-237g-107. Content, form, and effect of declaratory rulings

(a) **Decision, Content and Form.** Each declaratory ruling will contain:

(1) citations to the law involved;

(2) the Board's decision on any timely-filed request for a hearing;

(3) a statement of facts stipulated or found by the Board, when necessary for the decision;

(4) the reasons for the decision, including a response to the legal claims raised by the parties;

(5) citations to specific precedents used to support the decision; and

(6) any dissenting or concurring opinion filed by any member of the Board.

(b) **Decision Not to Issue a Ruling.** In the event the Board declines to exercise its discretion to issue a declaratory ruling, the Board will issue a decision dismissing the petition and indicating the reasons for the decision. The factors considered by the Board in determining whether to exercise its discretion to issue a declaratory ruling include, but are not limited to:

(1) whether the subject matter will become an issue in controversy in the foreseeable future and adjudication under the provisions of the Unemployment Compensation Act will be necessary;

(2) whether the ruling involves solely a question of law or is dependent on the particular factual circumstances. If the ruling is dependent upon the factual circumstances, the likelihood that an evidentiary hearing will be necessary to issue a ruling;

(3) whether the facts necessary to resolve the matter are developed and the matter is ripe for a declaratory ruling;

(4) the particular interests affected by the ruling; the petitioner's purpose for obtaining a ruling; and the number of persons directly affected;

(5) the number of persons in substantially similar circumstances;

(6) whether the decision will have significant precedential value;

(7) the complexity of the legal and factual issues presented;

(8) the potential impact of the ruling on the normal adjudicatory process under the Unemployment Compensation Act;

(9) whether the normal adjudicatory process, including such alternative procedures as certification of questions of law to the Board by the Administrator or Referee, provides a suitable alternative to a declaratory ruling;

(10) whether a declaratory ruling would be more appropriately issued by the Administrator or by the Board;

(11) whether the administrative costs and burdens of a declaratory ruling are justified by the scope of the interests affected, and the availability of any alternative forum; and

(12) the Board's interest in clarifying the law, resolving inconsistency, or correcting erroneous decisions or interpretations.

(c) **Effective Date, Appeal Date.** Declaratory rulings shall be effective when personally delivered or mailed, or on such later date specified by the Board in the ruling. For the purposes of any appeal to the Superior Court from a declaratory ruling, the date of personal delivery or mailing shall control.

(d) **Effect of Declaratory Ruling.** Pursuant to Conn. Gen. Stat. section 4-176 (h), a declaratory ruling is a final decision in a contested case for the purposes of any appeal. Appeals from a declaratory ruling are governed by Conn. Gen. Stat. section 4-183, and not the provisions of chapter 567 of the Connecticut General Statutes.

(e) **Failure to Act.** If the Board does not issue a declaratory ruling on a complete petition within 180 days after the filing of the petition, or later if agreed to by the parties, the Board shall be deemed to have decided not to issue a ruling. Thereafter, the petitioner may seek a declaratory judgment in Superior Court pursuant to section 4-175 of the Connecticut General Statutes.

(Effective March 30, 1990)

Agency
Department of Labor

Subject
Appeals and Hearing Procedures

Inclusive Sections
§§ 31-244-1—31-244-17

CONTENTS

Appeals and Hearing Procedures

Sec. 31-244-1—31-244-17. Repealed

Repealed June 23, 1986.

Sec. 31-244-1a. Definitions

As used in sections 31-244-1a through 31-244-9a inclusive:

(a) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(b) "Benefits" means unemployment compensation payable to an individual with respect to his unemployment under Chapter 567 of the General Statutes.

(c) "Claimant" means an individual who is filing or has filed a claim for benefits.

(d) "Predetermination hearing" means a hearing called by the Administrator, pursuant to Section 31-241 of the General Statutes, for the purpose of finding facts necessary to make a determination of eligibility for benefits.

(e) "Rebuttal" means an opposing or explanatory statement by an individual in response to potentially adverse information or a contradictory statement.

(Effective July 1, 1992; Amended October 23, 1996)

Sec. 31-244-2a. Predetermination hearings

The Administrator shall schedule a predetermination hearing in any instance in which (a) an individual's claim for benefits indicates that his reason for unemployment presents an issue of eligibility under any provision of Subsection (d) of Section 31-227 or 31-236 of the General Statutes, or Section 31-235 of the General Statutes if the Administrator determines that the issue of the individual's availability for work relates to the circumstances of his separation, or (b) the Administrator cannot reasonably determine from the individual's claim or by contacting the separating employer by telephone at the time the claim is made that his reason for unemployment was lack of work or some other form of non-disqualifying involuntary termination.

(Effective July 1, 1992; Amended October 23, 1996)

Sec. 31-244-3a. Notice of predetermination hearing

(a) Except as provided in subsections (e) and (f), a claimant may elect to participate in a predetermination hearing by appearing in person or by telephone. The Administrator shall allow the claimant to participate solely by submitting a written statement when the claimant has a compelling personal reason that prevents his appearance in person or by telephone including but not limited to his return to employment.

(b) The Administrator shall promptly provide written notice of the predetermination hearing to the individual and shall mail written notice to the employer of the date, time and place of the predetermination hearing, as well as a brief statement of the reason for

unemployment provided by the claimant to be adjudicated at such hearing. The notice shall specify a time range during which the claimant should be available when telephone participation is elected.

(c) The hearing notice to the employer shall specify that the employer may elect to participate in a predetermination hearing by appearing in person, by telephone or by submitting a written response to the hearing notice, containing the employer's account of the circumstances surrounding the individual's separation. The Administrator may provide specific questions to be answered in writing by the employer. The notice shall specify a time range during which the employer's designated representative should be available when telephone participation is elected.

(d) Where technologically feasible, the administrator may authorize either party to participate in a predetermination hearing by other electronic means.

(e) The administrator may deny a party's request to participate by telephone in a predetermination hearing where the administrator concludes that in light of highly complex questions of fact or law or other unusual circumstances, telephone participation would significantly undermine the effectiveness of the adjudication process.

(f) The administrator shall not generally allow telephone participation in a hearing which is being conducted solely to adjudicate eligibility issues arising in conjunction with a continuing claim for benefits (e.g. availability for work, reasonable efforts to find work) and may disallow telephone participation whenever such issue is being adjudicated concurrently with a predetermination hearing.

(g) The hearing notice shall inform the claimant and the employer of their rights in the predetermination hearing including:

(1) the right to be represented by any person, including an attorney;

(2) the right to present evidence, documents and witnesses; and

(3) the right to cross-examine witnesses and parties, so long as the Administrator deems such cross-examination to be appropriate and relevant.

(h) The Administrator shall schedule each predetermination hearing no earlier than the tenth calendar day following the issuance of notice of such hearing.

(i) The Administrator shall mail the notice of the predetermination hearing to the employer's address that appears on the Notice of Separation (Form UC-61). Where no Notice of Separation is provided to the Administrator, the Administrator shall mail the predetermination hearing notice to the most recent address of record provided by the employer to the Administrator's Employer Status Unit.

(Effective July 1, 1992; Amended October 23, 1996)

Sec. 31-244-4a. Timeliness of written response to notice of predetermination hearing or in response to Administrator's request for information on a claim

(a) In order to be considered timely for purposes of Section 31-241 of the Connecticut General Statutes, an employer's written response to the notice of a predetermination hearing must be actually received by mail, in person or by facsimile machine (FAX) in the office of

the Administrator where such hearing is scheduled to be heard by the time the hearing is scheduled to commence on the scheduled hearing date. In cases where the employer elects to participate in the predetermination hearing process by telephone, such election must be communicated to the Administrator no later than the close of business, two days prior to the date of said hearing along with the name, title and telephone number of the individual who will participate in the predetermination hearing on behalf of the employer. Nothing in this section precludes consideration of a late response received before an eligibility determination is made, or subsequent to such determination in the Administrator's exercise of continuous jurisdiction under Section 31-243 of the Connecticut General Statutes. However, such consideration shall not relieve the employer of any charges imposed pursuant to Section 31-241 of the Connecticut General Statutes as a consequence of untimely response.

(b) In order to be considered timely for purposes of 31-273(k) of the Connecticut General Statutes, an employer's written response to the Administrator's request for information on a claim for unemployment compensation benefits shall be actually received by mail, in person or by facsimile machine (FAX) within the time frame prescribed in the Administrator's request.

(Effective July 1, 1992; Amended October 23, 1996; Amended January 3, 2005; Amended May 12, 2014)

Sec. 31-244-5a. Postponements

In order to insure timely determinations of eligibility for benefits, it shall be the general practice of the Administrator to deny postponement requests. The Administrator may grant a request for postponement in extraordinary circumstances where the rights of one or both parties would be substantially prejudiced by denying such a request and the effect of such denial could not be mitigated by the opportunity for submission of a written statement or participation by telephone or other electronic means. The granting of any postponement request shall be at the sole discretion of the Administrator.

(Effective July 1, 1992; Amended October 23, 1996)

Sec. 31-244-6a. Exemption of certain categories from statutory charging consequences for non-participation in the predetermination hearing (Repealed)

Repealed May 12, 2014.

(Effective July 1, 1992; Repealed May 12, 2014)

Sec. 31-244-7a. Determination of adequacy of the employer's written response

(1) An employer's written response to notice of a predetermination hearing must contain adequate information to be considered a timely response within the meaning of Section 31-241 of the Connecticut General Statutes. To be considered adequate, an employer's written response must (a) specify the reason for the separation, and (b) answer, in good faith, the questions corresponding to the appropriate separation issue, either by completing the

appropriate areas of the questionnaire provided to the employer with the predetermination hearing notice or by submitting relevant alternate documentation, or both. The Administrator shall determine whether an employer's written response is adequate. So long as an employer substantially complies with subdivisions (1) and (2) of this subsection, the Administrator shall determine that an employer's written response is adequate.

(2) An employer's written response to a request by the Administrator for information with respect to a claim for unemployment compensation benefits, including, but not limited, to any requests for additional information, shall be considered an adequate response within the meaning of section 31-273(k) of the Connecticut General Statutes if the response is provided in writing, is timely and is intended in good faith to respond to the request for information in the manner prescribed in such request.

(Effective July 1, 1992; Amended May 12, 2014)

Sec. 31-244-8a. Conduct of the predetermination hearing

(a) The Administrator will control and conduct the predetermination hearing informally through examination of the record and direct questioning as he determines necessary for a proper and complete decision.

(b) In conducting the hearing, the Administrator will not be bound by the ordinary common law or statutory rules of evidence or procedure.

(c) The issue(s) addressed at the predetermination hearing will be confined to the issue(s) listed on the hearing notice. A hearing will not be conducted regarding any other eligibility issue which is identified by the Administrator during the predetermination hearing unless the parties are afforded proper notice of such issue and hearing.

(d) An issue stated in terms of a voluntary leaving or a discharge shall generally be construed to be a single issue covering the separation from employment so that the record may be developed on either or both kinds of separation.

(e) The Administrator may limit or deny a party's right to cross-examination whenever he determines that such cross-examination is not producing or would not produce information useful or relevant to adjudication of the claim.

(f) The Administrator may limit or exclude from the record testimony, documents or other evidence which he determines to be incompetent, irrelevant, unduly repetitious or otherwise improper.

(g) The Administrator shall not permit any individual present at the predetermination hearing to engage in improper behavior or tactics which disrupt the fair, orderly, efficient and effective conduct of the hearing. The Administrator may, in his own discretion, take any action he deems necessary to prevent or discontinue such behavior or tactics, including termination of the hearing.

(h) During a predetermination hearing, on the Administrator's own motion or on the motion of any interested party, and at the sole discretion of the Administrator, a continuance may be granted for good cause and the record kept open for a specified period of time.

(i) The administrator shall contact by telephone any party who has provided timely notice

of an intent to participate by telephone on the date of the scheduled hearing during the time range on the hearing notice.

(j) The administrator may develop and utilize any forms or questionnaires deemed necessary for use in the hearing process.

(k) The Administrator shall take all steps necessary to insure that any party, whether participating in person, in writing, by telephone or by other electronic means to a predetermination hearing, is afforded appropriate opportunity for rebuttal. However, where an employer's participation is limited to a written statement and the employer has not indicated an interest in participating by telephone, the Administrator will attempt to contact the employer by telephone where there is a clear conflict between the factual accounts offered by each party and adjudication of the fact(s) in dispute is necessary to disposition of the claim. Where information resulting from such contact is provided by the employer when the claimant is no longer physically or telephonically present, the claimant shall be informed of the information provided by the employer. The claimant shall be provided an appropriate opportunity for rebuttal of any potentially disqualifying information acquired as a result of such contact, regardless of when such information was provided.

(*l*) The Administrator shall use best efforts to accurately summarize and record in writing the relevant statements of both parties and any witnesses in a predetermination hearing and shall further use best efforts to verify that the statement accurately reflects the parties' testimony.

(m) Where either party makes a request, the Administrator shall provide within a reasonable time period, a copy of any adjudicative report created by the administrator during a predetermination hearing.

(Effective July 1, 1992; Amended October 23, 1996)

Sec. 31-244-9a. Employer's appeal of charges resulting from its nonparticipation in the predetermination hearing.

The issue of an employer's non-participation in a predetermination hearing may not be the subject of an appeal to an Employment Security Appeals Referee until the effect of such non-participation is reflected in (1) a statement of quarterly charges (Form UC-54Q) in the case of a contributing employer, (2) in the case of a reimbursing employer, a monthly billing statement, or (3) in the case of an out-of-state employer, first notification to the employer from the Administrator. The employer may appeal its assessment of charges resulting from its non-participation in the predetermination hearing upon receipt of the first statement of quarterly or monthly charges which includes charges resulting from the employer's non-participation at the predetermination hearing. Such statement of quarterly or monthly charges shall be the only determination of the Administrator through which the issue of nonparticipation may be appealed. A contributing employer's appeal from this determination must be made pursuant to the provisions of Section 31-225a(h)(3) of the Connecticut General Statutes. A reimbursing employer's appeal from this determination shall be made

pursuant to the provisions of Section 31-225(g)(2)(D) of the Connecticut General Statutes.

(Effective July 1, 1992; Amended January 3, 2005; Amended May 12, 2014)

Agency
Department of Labor

Subject
Personal Data

Inclusive Sections
§§ 31-250-1—31-250-12

CONTENTS

Personal Data

Sec. 31-250-1. Personal data definitions

(a) The following definitions shall apply to these regulations:

(1) "Category of Personal Data" means the classifications of personal information set forth in Personal Data Act, Section 4-190 (9) of the Connecticut General Statutes.

(2) "Other data" means any information which, because of name, identifying number, mark or description can be readily associated with a particular person.

(b) Terms defined in Section 4-190 of the Connecticut General Statutes shall apply to these regulations.

(Effective July 1, 1988)

Sec. 31-250-2. General nature and purpose of personal data systems

(a) **Job Service: Employment Applications**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Employment Applications Records

(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT. 06109

(C) Automated, Manual or Combination:

Combination

(D) Purpose:

(i) Retrieval of applicants for placement, enrollment in programs or job development

(ii) Labor Market Information (Research Department)

(iii) Demographic planning of programs.

(iv) Reporting–State and Federal purposes

(E) Title and Address of Official Responsible for the System of Records and to Whom Requests for Disclosure or Amendment of the Records in the System should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Routine sources of data are the Job Service registrants, Job Service intake interviewers, and other agencies, such as public welfare and rehabilitation facilities.

(G) Legal Authority:

Wagner-Peyser Act (29 U.S.C. 49 *et seq.*)

(2) Categories of Personal Data:

(A) Categories of personal data:

(i) Employment/business history

(ii) Educational/training courses

(iii) Characteristics including physical disability, veteran
(iv) Finances
(v) Work desired
(vi) Licenses held
(vii) Barriers to employment (lack of transportation, child care, occupational skills)
(viii) Number in family
(ix) Dates of Visits
(x) Record of Services
(xi) Occupational Code and Title
(B) Categories of Other Data:
(i) Name
(ii) Social Security Number
(iii) Address
(iv) Telephone Number
(v) Sex
(vi) Birthdate
(vii) U.S. Citizen
(viii) Race/Ethnic Group
(C) Categories of persons for whom records are maintained: All applicants for services
(3) Uses to be Made of Personal Data:
(A) Routine Use of Records:
(i) Referral to employment or enrollment in programs in vocational training programs. To this end, selected data may be shared with employers and/or other agencies.
(ii) Statistical summaries
(iii) Local office follow-up services
(iv) The Unemployment Compensation Department is provided information which may be pertinent to the eligibility of claimants for Unemployment Compensation.
(v) Service Delivery Areas (SDAs) are provided lists of potential applicants for programs, sponsored by the Job Training Partnership Act.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(b) **Job Service: Job Orders**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
Job Service Job Order Records
(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(C) Automated, Manual or Combination:
Combination
(D) Purpose:
(i) Retrieval of information for referral and enrollment of applicants
(ii) Compilation of statistics for Labor Market Information
(E) Title and Address of Official Responsible for the System of Records and to Whom Requests for Disclosure or Amendment of Records in the System Should be Made:
Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109
(F) Routine Sources of Data:
(i) Employers and employer representatives
(ii) Job Service interviewers
(iii) Unemployment Compensation employer records are accessed to verify employer tax registration numbers
(G) Legal Authority:
Wagner-Peyser Act (29 U.S.C. 49 *et seq.*)
(2) Categories of Personal Data:
(A) Categories of Personal Data:
(i) Occupational and Standard Industrial (SIC) codes
(ii) Rate of pay
(iii) Job requirements
(iv) Characteristics of job
(v) Dates of order, referrals and results
(vi) Referral instructions
(B) Categories of Other Data:
(i) Employer name
(ii) Employer address
(iii) Representative's name
(iv) Telephone Number
(v) Connecticut Unemployment Compensation Employer Registration Number
(vi) Names of applicants referred/hired
(vii) Reasons applicant not hired
(C) Categories of persons for whom records are maintained: Employer/representative to whom referrals are made and the applicants referred to jobs.
(3) Uses to be Made of Personal Data:
(A) Routine Use of Records:
(i) Referral of applicants to employer, including any job development efforts.

(ii) Statistics are compiled for Labor Market Information.

(iii) Investigation of client complaints.

(iv) Information is sent to the Unemployment Compensation Department regarding referrals of claimants.

(v) Job vacancies which are difficult to fill are directed to Interstate Clearance for exposure in other states.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(c) **Job Service: Complaints from Agency Clients and Job Service Staff**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Records of Complaints from Agency Clients and Job Service Staff.

(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) Purpose:

(i) Settle discrimination complaints from registered applicants.

(ii) Monitor Job Service staff and records to ensure nondiscrimination of services to clients.

(iii) Resolve complaints of one agency employee regarding another agency employee.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Complainant, Job Service Job Orders, local office staff, health care providers and witnesses to any incident in dispute, if applicable.

(G) Legal Authority:

Presidential Executive Order 11246, amended by 11375; Titles VI and VII of the 1964 Civil Rights Act; Connecticut General Statutes, Sections 4-61u, 4-61w, 4-114 (a), 17-206j; 46a-60 (8), 46a-68, 46a-75, 46a-78, 46a-99, and Connecticut Executive Orders 3, 11 and 17.

(2) Categories of Personal Data:
(A) Categories of personal data:
(i) History of physical/mental condition
(ii) Employer's history with Job Service
(iii) Characteristics at issue (age, religion, race/ethnic group, handicap)
(iv) Statement(s) from witnesses
(v) Supervisory records
(vi) Complainant's statements
(vii) Date of complaint
(B) Categories of Other Data:
(i) Name
(ii) Social Security Number
(iii) Address
(iv) Telephone Number
(v) Employer name
(vi) Employer address
(vii) Employer telephone number
(C) Categories of persons for whom records are maintained: Complainants, health care providers and the employers.
(3) Uses to be Made of Personal Data:
(A) Routine Use of Records:
(i) Resolutions are shared with the Agency's Personnel Administrator, Affirmative Action Designee and the Job Service Director.
(ii) The Federal Office of Civil Rights and the Equal Employment Opportunity Commission receive verbal information when requested.
(iii) A statement of the final determination is provided to the complainant and respondent.
(iv) When deficiencies are discovered, the appropriate agency is notified (OSHA, Health Department, etc.).
(v) Information is summarized into a log for reporting purposes.
(vi) Reports are filed with the local Job Service office manager and the Job Service Director regarding violations requiring corrective action.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.S.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(d) **Job Service: Trade Adjustment Assistance**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:

Trade Adjustment Assistance Records

(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) Purpose:

To provide assistance to workers who lose their jobs as the result of increased foreign import competition.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Routine sources of data are the applicants for assistance, past employers, local office personnel records, unemployment compensation records, training facilities, the U.S. Department of Labor and the Trade Act Certification Unit.

(G) Legal Authority:

Trade Act of 1974, 29 CFR Part 91, Public Law 93-618, as amended by P.L. 97-35, P.L. 98-120 and P.L. 99-272.

(2) Categories of Personal Data:

(A) Categories of Personal Data:

(i) Employment history
(ii) Vocational goals
(iii) Education

(B) Categories of Other Data:

(i) Name
(ii) Address
(iii) Social Security Number
(iv) Telephone Number
(v) Sex
(vi) Name and address of employer entering into on-the-job training contract
(vii) Name and title of employer's designee responsible for administering on-the-job training contract
(viii) Course name, cost, hours and duration

(C) Categories of persons for whom records are maintained: Applicants for Trade Adjustment Assistance.

(3) Uses to be Made of Personal Data:

(A) Routine Use of Records:

(i) Records are used to determine the applicant's eligibility for benefits and services, including job referral and placement, job search and relocation allowances and referral to training.

(ii) Information is provided to the Unemployment Compensation Department for the determination of eligibility for Trade Readjustment Allowances.

(iii) Statistics are supplied for federal reports.

(iv) Referral to institutional and on-the-job training programs.

(v) Follow-up is done after completion of training to offer job search assistance.

(B) Retention Schedule:

Records are currently retained until disposition of pending federal litigation. Once such litigation is resolved, records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(e) **Job Service: Federal Bonding Program**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Federal Bonding Program Records

(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) Purpose:

The purpose is to provide fidelity bonding to those people unable to be bonded by commercial means, in order to obtain employment.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Applicants, prospective employers, and local office interviewers.

(G) Legal Authority:

Wagner-Peyser Act (29 U.S.C. 49 *et. seq.*)

(2) Categories of Personal Data:

(A) Categories of Personal Data:

(i) Amount of bond

(ii) Occupational title of job
(iii) Date terminated employment
(B) Categories of Other Data:
(i) Name
(ii) Social Security Number
(iii) Address
(iv) Name of Employer
(v) Address of Employer
(vi) Name of Bonding Coordinator
(C) Categories of persons for whom records are maintained:
Records are maintained regarding individuals for whom bonding was provided.
(3) Uses to be Made of Personal Data:
(A) Routine Use of Records:
(i) Records are used to verify continuity of employment for which bond was issued.
(ii) Upon separation from employment, records are used to request termination of bond.
(iii) Bond request is submitted to the McLaughlin Insurance Company in Washington, D.C.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(f) **Job Service: Alien Employment Certification**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
Alien Employment Certification Records
(B) Location of System:
Copies of the application are retained at:
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
Originals are retained at:
U. S. Department of Labor
John F. Kennedy Building
Boston, Massachusetts 02203
(C) Automated, Manual or Combination:
Combination
(D) Purpose:
To insure that there are no U. S. workers able, qualified and willing to fill a position for

which an employer seeks to hire an alien, and that the employment of the alien will not have an adverse affect on the wages and working conditions of U. S. workers similarly employed.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Aliens, workers, prospective employers, agents or attorneys and unemployment compensation employer records.

(G) Legal Authority:

Section 212A, Immigration and Nationality Act, 20 CFR, Part 656

(2) Categories of Personal Data:

(A) Categories of Personal Data:

(i) Employment history
(ii) Education
(iii) Licenses or degrees
(iv) References from past employers
(v) Nature of employer's business
(vi) Prevailing wages of similar jobs
(vii) Other data retained in job orders, in accordance with subdivision (2) of subsection (b) of this section.

(B) Categories of Other Data:

(i) Name of Alien
(ii) Address of Alien
(iii) Birthplace and nationality
(iv) Alien's birthdate
(v) Type of visa
(vi) Name of Employer
(vii) Address of employer
(viii) Telephone number
(ix) Requirements for job
(x) Working conditions and duties
(xi) Number of openings
(xii) Housing description, if applicable

(C) Categories of persons for whom records are maintained:

Aliens, their prospective employers and employers responding to wage surveys.

(3) Uses to be Made of Personal Data:

(A) Routine Use of Records:

(i) Job orders are written based on information supplied on the application in an attempt

to recruit U. S. workers.

(ii) Records are checked against employer files to ensure that the employer is paying unemployment compensation taxes and that the job offer is valid. Copies of applications for employers without unemployment compensation tax numbers are routed to the Employer Status Unit.

(iii) Names and addresses of the aliens and their employers are forwarded to the Immigration and Naturalization Service, in compliance with Section 31-51k of the General Statutes.

(iv) The job requirements are restated in the form of a wage survey and mailed to employers with similar occupations in an attempt to determine a prevailing wage.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(g) **Job Service: Veterans' Workshops**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Veteran's Workshop Records

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) Purpose:

To offer employability assistance to veterans who meet pre-established criteria.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Veteran, Job Service interviewers and prospective employer.

(G) Legal Authority:

Title IV-C of the Job Training Partnership Act (29 U.S.C. 1721)

(2) Categories of Personal Data:

(A) Categories of Personal Data:

(i) Employment history

(ii) Education
(iii) Military Status
(iv) Personal data collected under subsection (a) of this section
(B) Categories of Other Data:
(i) Names of veterans attending workshops
(ii) Social Security Number
(iii) Address of veteran
(iv) Comments on workshops
(v) Other data collected under subsection (a) of this section
(C) Categories of persons for whom records are maintained:
Unemployed Vietnam-Era, Korean and/or disabled veterans.
(3) Uses to be Made of Personal Data:
(A) Routine Use of Records:
(i) To assist Veterans in finding employment
(ii) To document amount of grant money spent
(iii) Statistics are compiled from records and submitted to the U. S. Department of Labor.
(iv) Follow-up is conducted to determine the number of participants who obtained employment within 90 days of attending the workshop.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(h) **Job Service: Work Incentive Program (WIN), also known as the Job Connection**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
Work Incentive Program (WIN) Records
(B) Location of System:
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(C) Automated, Manual or Combination:
Combination
(D) Purpose:
(i) To provide services to AFDC registrants leading to full-time employment.
(ii) To supply statistics for planning needed programs.
(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:
Director, Connecticut Job Service

200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Clients, WIN interviewers, staff from the Departments of Human Resources and Income Maintenance, program operators, employers and training facility personnel.

(G) Legal Authority:

Federal Regulations at Title IV-C, Section 445 of the Social Security Act.

(2) Categories of Personal Data:

(A) Categories of Personal Data

(i) Appraisal for services

(ii) Home situation

(iii) Health benefits

(iv) Food Stamp receipt

(v) Personal data collected under subsection (a) of this section

(B) Categories of Other Data:

(i) Welfare case number

(ii) Name of training facility/employer

(iii) Conditions of training

(iv) Other data collected under subsection (a) of this section

(C) Categories of persons for whom records are maintained:

AFDC registrants/recipients and training contractors.

(3) Uses to be Made of Personal Data:

(A) Routine Use of Records:

(i) Records are shared with the Departments of Income Maintenance and Human Resources personnel for providing services continually through the various job-readiness stages.

(ii) Statistics are compiled for state and federal purposes.

(iii) Other state agencies require data for program planning.

(iv) Annually records are cross-checked against Income Maintenance records to determine percentages of former clients receiving public welfare benefits.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(i) **Job Service: Targeted Jobs Tax Credit (TJTC)**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Targeted Jobs Tax Credit (TJTC) Records

(B) Location of System:
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(C) Automated, Manual or Combination:
Combination
(D) Purpose:
To provide employers a financial incentive to hire workers from certain targeted groups.
(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:
Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109
(F) Routine Sources of Data:
Applicants, employers, employer representatives, Veterans Administration, public welfare, agencies, Department of Correction, schools and Division of Vocational Rehabilitation.
(G) Legal Authority:
Revenue Act of 1978, Tax Equity and Fiscal Responsibility Act of 1982.
(2) Categories of Personal Data:
(A) Categories of Personal Data
(i) Employment/Business History
(ii) Characteristics (handicapped, veteran, welfare, felon, education)
(iii) Finances
(iv) Number in family
(v) Start to work date
(vi) Starting Wage
(vii) Job Title
(B) Categories of Other Data:
(i) Name
(ii) Address
(iii) Social Security Number
(iv) Name of firm
(v) Employer's representative name & title
(vi) Employer's address
(vii) Employer's telephone number
(viii) IRS number
(ix) Initiating agency
(x) Interviewer's name and signature
(xi) Local office name and address
(C) Categories of persons for whom records are maintained:

Applicants for vouchers and employers seeking the tax credit.

(3) Uses to be Made of Personal Data:

(A) Routine Use of Records:

(i) Determining the eligibility of workers for vouchers.

(ii) Determining employer eligibility for Certification.

(iii) Statistics are compiled regarding the number of vouchers and certifications issued as well as specific data relating to the target group characteristics for state and federal use.

(iv) Reviews and audits to ensure compliance with federal regulations.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(j) **Job Service: Testing—Aptitude and Proficiency**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Testing—Aptitude and Proficiency Records

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) Purpose:

To make referrals based on aptitude to apprenticeship programs or entry-level positions.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Routine sources are candidates for jobs/apprenticeships and the scorer.

(G) Legal Authority:

Wagner-Peyser Act (29 U.S.C. 49 *et. seq.*)

(2) Categories of personal data:

(A) Categories of personal data

(i) Raw test score

(ii) Converted test score

(iii) Personal data collected under subsection (a) of this section, if appropriate

(B) Categories of Other Data:
(i) Name of candidate
(ii) Address of candidate
(iii) Name and address of apprenticeship committee
(iv) Personal data collected under subsection (a) of this section, if appropriate
(C) Categories of persons for whom records are maintained:
Individuals tested and the apprenticeship committee.
(3) Uses to be Made of Personal Data:
(A) Routine Use of Records:
(i) Scores are reported to joint apprenticeship committees for use in their selection of candidates for apprenticeship programs.
(ii) Job Service applicants who are tested by the Standard Aptitude are given referrals to employers who have requested certain skills or aptitudes.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(k) **Job Training Partnership Act (JTPA) Administration**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
Job Training Application Records
(B) Location of System:
Automated Records:
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
Manual Records:
Local Service Delivery Area administrative offices.
(C) Automated, Manual or Combination:
Combination - automated aggregate records are maintained centrally. Individual records are maintained locally. Requests for individual information will be routed to responsible local entity.
(D) General Nature and Purpose:
Determination of eligibility of applicants for federal job training programs, and compilation of statistical and demographic information required by the United States Department of Labor, the Connecticut General Assembly and the State Job Training Coordinating Council to measure program effectiveness.
(E) Title and Address of Official Responsible for the System of Records and To Whom

Requests for Disclosure and Amendment of the Records in the System Should be Made:
Director, JTPA Administration
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(F) Routine Sources of Information:
(i) Applicant interviews
(ii) Periodic validation is accomplished through public welfare, education, health, and social service agencies.
(G) Legal Authority:
The Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)
(2) Categories of Personal Data:
(A) Categories of personal data
Education, income, handicapped conditions, employment history, dependents, record of past criminal offenses.
(B) Categories of other data:
Name, address, telephone, sex, birthdate, citizenship, race/ethnic, Social Security number, public assistance receipt.
(C) Categories of persons for whom records are maintained:
(i) applicants for job training services
(ii) Enrollees in job training programs
(3) Uses to be made of personal data:
(A) Routine Use of Records
(i) Records are used in automated aggregate form to fulfill federal and public reporting requirements and to evaluate program effectiveness.
(ii) Records are used locally to screen applicants for eligibility and appropriateness.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(*l*) **Job Training Partnership Act (JTPA) Advisory Councils**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
JTPA Monitoring Records
(B) Location of System:
Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, manual or combination:
Manual
(D) General nature and purpose:
A list of members and the business affiliation of each.
(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:
Director, JTPA Administration
Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109
(F) Routine sources of information:
Supplied by members.
(G) Legal Authority:
The Job Training Partnership Act (29 U.S.C. 1501 *et. seq.*)
(2) Categories of Personal Data:
(A) Categories of personal data:
Employment/business
(B) Categories of other data:
(i) Name
(ii) Address
(iii) Employment/business address
(C) Categories of persons for whom records are maintained:
(i) Members of State Job Training Coordinating Council
(ii) Members of local Private Industry Councils
(3) Uses to be Made of Personal Data:
(A) To monitor membership composition of councils against representational mandates.
(B) Retention schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(m) **Job Training Partnership Act (JTPA) Complaints**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
JTPA Complaint Resolution System
(B) Location of system:
Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) General nature and purpose:

Information file is developed to effect resolution to complaints filed with the JTPA Administration.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, JTPA Administration
Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine sources of information:

Information is supplied by various parties to the complaint.

(G) Legal Authority:

The Job Training Partnership Act (29 U.S.C. 150 *et. seq.*)

(2) Categories of Personal Data:

(A) Categories of personal data:

Education, income, handicapping conditions, employment history, dependents, record of past criminal offenses.

(B) Categories of other data:

(i) Name
(ii) Address
(iii) Telephone
(iv) Sex
(v) Birthdate
(vi) Citizenship
(vii) Race/ethnic status
(viii) Social Security number
(ix) Public Assistance receipt

(C) Categories of persons for whom records are maintained:

(i) Applicants for job training services
(ii) Enrollees in job training programs

(3) Uses to be Made of Personal Data:

(A) Investigation and resolution of complaints.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(n) **Job Service: Comprehensive Employment and Training Act (CETA)**

(1) **General Nature and Purpose of Personal Data System:**

(A) Name of system:

Balance of State CETA Records.

(B) Location of system:

Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) General nature and purpose:

To screen for program eligibility and appropriateness prior to statutory expiration of CETA (October 1, 1983).

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Connecticut Job Service
Connecticut Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine source of information:

Applicant interviews

(G) Legal Authority:

Comprehensive Employment and Training Act (29 U.S.C. 801 *et. seq.*)

(2) Categories of Personal Data:

(A) Categories of personal data:

(i) Education
(ii) Income
(iii) Handicapping conditions
(iv) Employment history
(v) Dependents
(vi) Record of past criminal offenses
(vii) Relationship to Government/CETA officials

(B) Categories of other data:

(i) Name
(ii) Address
(iii) Telephone number
(iv) Sex
(v) Birthdate
(vi) Citizenship
(vii) Race/ethic status
(viii) Social Security number

(ix) Public Assistance receipt

(C) Categories of persons for whom records are maintained: Enrollees in CETA training programs

(3) Uses to be Made of Personal Data:

(A) Response to personal inquiry and ongoing fiscal audits.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(o) **Unemployment Compensation Benefits Records**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Unemployment Compensation Benefit Records, including:

(i) Disaster Unemployment Assistance

(ii) Trade Readjustment Allowances

(iii) Unemployment Compensation for Federal Employees

(iv) Unemployment Compensation for Ex-Servicemen

(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) Purpose of Maintaining System:

To provide an official accounting of an individual's filing for unemployment compensation, including a record of any eligibility hearings held. These records make it possible to pay benefits to eligible individuals and to tax employers based on the claims chargeable to their accounts.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Unemployment Compensation
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Source of Data:

Routine sources of data include the claimants, their employers, their unions, other government agencies (e.g., the Social Security Administration, police departments, and other state employment security agencies), insurance carriers and physicians.

(G) Legal Authority for Collection, Maintenance and Use:

Sections 31-222 through 31-274 of the Connecticut General Statutes, inclusive.

(2) Categories of Personal Data:

(A) The following categories of personal data are maintained in claimant unemployment compensation benefit records.

(i) Employer's quarterly reports of employees' wages.

(ii) Benefit payment filing history (including a record of child support payments deducted from unemployment compensation benefits, trade readjustment allowance payments, and disaster unemployment assistance payments)

(iii) Student status

(iv) Marital status

(v) Separation information from one or more former employers (which may include a record of severance, vacation or holiday payments)

(vi) Citizenship status

(B) The following categories of other personal data may be maintained in claimant unemployment records:

(i) Claimant's name

(ii) Date of Birth

(iii) Social Security number

(iv) Address

(v) Race and national origin

(vi) Telephone numbers

(vii) Spouse's Name

(viii) Dependent's name

(ix) Health Restrictions

(x) Pension and social security benefit information (including whether or not the individual participates in medicare)

(xi) Civil Service status

(xii) Employment status (e.g. full time or part-time) which may include the hours worked and the hourly rate of pay.

(xiii) Former job title

(xiv) Location at which work was performed for some employers

(xv) Self-employment information (which may include farm products raised and held primarily for sale for income)

(xvi) Information on an individual's eligibility to receive income protection, insurance payments, supplemental unemployment benefit payments

(xvii) Information about an individual's eligibility for a subsistence allowance for vocational rehabilitation or an educational assistance allowance under the War Orphans Educational Assistance Act.

(xviii) Income tax withholding information

(C) Categories of persons for whom records are maintained:

(i) Individuals filing for unemployment compensation (including disaster unemployment assistance, trade readjustment allowance, federal employees' unemployment compensation, and unemployment compensation for ex-servicemen)

(ii) All employees of employers subject to chapter 567 of the Connecticut General Statutes

(3) Uses to be Made of Personal Data:

(A) The information gathered is used to determine an individual's eligibility for unemployment compensation benefits (as well as Disaster Unemployment Assistance and Trade Adjustment Assistance). The information is used for this purpose by the Administrator of Unemployment Compensation Act, the Employment Security Appeals Division and Board of Review, as well as state and federal courts.

(B) Benefit payment information is supplied to the Internal Revenue Service for income tax purposes.

(C) Wage record information is shared with other public employees in the performance of their public duties in accordance with Section 31-254 of the Connecticut General Statutes.

(4) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(p) **Unemployment Compensation Tax Records of Employers**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Employers' Unemployment Compensation Tax Records

(B) Location of System:

Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) Purpose for maintaining System:

To provide an official record of unemployment compensation benefits chargeable to an employer's account for the purpose of either billing or taxing the employer in order to establish a fund from which benefits can be paid.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Unemployment Compensation
Connecticut State Labor Department
200 Folly Brook Boulevard

Wethersfield, CT 06109

(F) Source of Data:

Routine Sources of data include the employers themselves, the courts, individuals filing for unemployment compensation, and other government agencies (e.g. the Secretary of State's Office, Department of Motor Vehicles, and Department of Revenue Services)

(G) Legal Authority for collection, maintenance, and use:

Sections 31-222 through 31-274 of the Connecticut General Statutes, inclusive.

(2) Categories of Personal Data:

(A) The following categories of personal data are maintained, in Employer Unemployment Compensation Tax Records:

(i) A listing of a business's corporate officers or partners or proprietor

(ii) Address

(B) The following categories of other personal data may be maintained in employer unemployment compensation tax records:

(i) Social security number

(ii) Telephone number

(iii) Record of liens or garnishments

(iv) Bank account numbers

(v) Date of birth

(vi) Quarterly wage records

(C) Categories of persons for whom records are maintained:

(i) Corporate officers

(ii) Business partners

(iii) Business proprietors

(3) Uses To Be Made of Personal Data:

(A) Used in determining an employer's liability for unemployment compensation tax.

(B) Used in collecting unemployment compensation taxes due.

(C) Shared with other federal and state agencies as part of investigations initiated by those agencies.

(4) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(q) **Appeals Hearings—Unemployment Compensation Program—Lower Authority**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Appeal Hearings—Unemployment Compensation Program—Referee Level Records

(B) Location of System:

(i) 401 Trumbull Street, Hartford, CT 06103
(ii) 200 Folly Brook Blvd., Wethersfield, CT 06109
(iii) 2 Cliff Street, Norwich, CT 06360
(iv) 37 Marne Street, Hamden, CT 0651
(v) 900 Madison Avenue (Room 218), Bridgeport, CT 06606
(vi) 83 Prospect Street, Waterbury, CT 06702

(C) Automated, Manual or Combination:

Combination

(D) General Nature and Purpose:

Compilation and maintenance of an official record of the hearing before an Appeals Referee.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Chief Appeals Referee
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Data is received from the Administrator of the Unemployment Compensation Act and from the parties to appeals.

(G) Legal Authority:

Connecticut General Statutes Section 31-237a through 31-249f.

(2) Categories of Personal Data:

(A) Personal Data maintained may include the following:

The Unemployment Compensation Department's benefit eligibility determination, wage records, application for benefits, and benefit filing and payment history; last employment, reasons for unemployment, grounds for appeal; tape cassette of appeals proceedings.

(B) Categories of other data maintained may include the following:

Any evidentiary submission that is received into the record. The evidentiary submissions include but are not limited to medical documents; affidavits; warnings and prior disciplinary actions taken by the employer; pension information; written arguments; social security information; briefs; employment history; claimant's name, address and social security number; history and investigatory information regarding alleged failure to report earnings.

(C) Categories of persons for whom records are maintained:

Claimants and/or employers involved in a disputed claim for unemployment benefits or employer tax liability.

(3) Uses to be made of Personal Data.

(A) Routine use of records:

The Appeals Referee compiles the record in order to render a decision regarding a disputed claim for unemployment benefits or employer tax liability.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(r) **Appeals—Unemployment Compensation Program—Higher Authority**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Appeals Decisions—Unemployment Compensation Program—Board of Review Records

(B) Location of System:

Employment Security Board of Review Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) General Nature and Purpose:

Through use of the record before the Appeals Referee and any additional documents, written argument or hearing deemed necessary (either by the board itself or by the Referee on behalf of the Board) the Board shall affirm, modify or reverse the decision of the Appeals Referee or remand the case to the Referee for such further proceedings as the Board may direct.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Chairman, Employment Security Board of Review
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data retrieval:

Data received from the record compiled at the Referee level hearing and from submissions of the parties in support of and in opposition to the appeal

(G) Legal Authority:

Connecticut General Statutes Sections 31-237a through 31-249f

(2) Categories of Personal Data:

(A) Personal data maintained may include the following:

All testimony, evidence and submissions from the hearing before the Appeals Referee and appeal documents.

(B) Other data maintained may include the following:

Submissions which include but are not limited to motions to reopen, legal briefs, and testimony or evidence not included as part of the original record before the Referee (in instances where the Board conducts or orders an additional hearing or otherwise

supplements the record).

(C) Categories of persons for whom records are maintained:

(i) Claimants and/or employers involved in an appeal from Referee's decision to the Board of Review.

(ii) Claimants and/or employers who are involved in an appeal from a Board of Review decision to the Superior Court.

(3) Uses to be made of Personal data:

(A) Routine use of records:

(i) Utilized by Chairman, Board members and other employees of the Board to decide appeals to the Board of Review from decisions of Appeals Referees.

(ii) On appeal to Superior Court a copy of the record is certified by the Board to the court.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(s) **Board of Labor Relations—Case Records**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Case Records in Prohibited Practice, Unfair Labor Practice, Representation and Declaratory Ruling Contested Cases.

(B) Location of System:

State Board of Labor Relations
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Combination or Manual:

Manual

(D) General Nature and Purpose:

(i) Active case records contain information gathered by agents and/or assistant agents, investigations and by formal hearings conducted by the Board. Needed for investigation, mediation, settlement, administrative adjudication and/or court litigation of prohibited practice, unfair labor practice, representation and declaratory ruling cases.

(ii) Closed Case Records contain information gathered by Agent's or assistant agents' investigations and by formal hearings conducted by the Board and/or generated by court litigation. Needed for future related cases which might arise between the same parties.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Board Agent, Board of Labor Relations
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Agents, assistant agents, participants at hearings

(G) Legal Authority:

Sections 5-270 to 5-280, Sections 7-460 to 7-479, Sections 10-153a to 10-156d and Sections 31-101 to 31-111b of the General Statutes.

(2) Categories of Personal Data:

(A) Personal Data maintained may include the following:

(i) Employment history
(ii) Transcript of hearings
(iii) Briefs
(iv) Reply briefs

(B) Other Data maintained may include the following:

(i) Employee names
(ii) Employee histories
(iii) Social Security numbers
(iv) Employer names

(C) Categories of persons for whom records are maintained:

Employers and employees participating in proceedings before the Board of Labor Relations.

(3) Uses to be made of Personal Data:

(A) Personal data is used by the Agent, Assistant Agent, Board Members and General Counsel for the purposes stated in subdivision (1) (D) of this subsection. Decisions are distributed regularly and systematically to the general public. Case files (closed and active) and made available to the general public, unless disclosure is prohibited by law.

(B) Record Retention:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(t) **Board of Labor Relations—Administrative and Mailing Address Files**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Administrative and Mailing Address Records

(B) Location of System:

State Board of Labor Relations

Connecticut Labor Department 200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Combination or Manual:

Manual

(D) General Nature and Purpose of System:

(i) Administrative files relating to Board members, including appointment and reappointment letters and copies of vouchers for per diem payments.

(ii) Mailing address files are utilized for proper routing of correspondence to unions, employers and attorneys having frequent dealings with the Board.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Board Agent, Board of Labor Relations
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

(i) Board members

(ii) Unions, Employers, Attorneys

(G) Legal Authority for Collection, Maintenance and Use:

(i) Board Member administrative files—Section 31-102 of the General Statutes

(ii) Mailing Address files:

Sections 5-270 to 5-280, Sections 7-460 to 7-479

Sections 10-153a to 10-156d and Sections 31-101 to 31-111b of the General Statutes.

(2) Categories of Personal Data:

(A) Personal Data maintained may include the following:

(i) Agency correspondence

(ii) Telephone records

(iii) Board member appointment and reappointment letters

(iv) Board members' payment vouchers

(B) Other data maintained may include:

Names, addresses and telephone numbers of Board members, and employers, union officials and attorneys dealing frequently with the Board.

(C) Categories of persons for whom records are maintained:

(i) Board members

(ii) Employers, unions and attorneys dealing frequently with the Board

(3) Uses to be made of Personal Data:

(A) Personal data is used by the Agent, Assistant Agents, Board Members and General Counsel for the purposes stated in subdivision (1) (D) of this subsection.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules

approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(u) **Board of Mediation and Arbitration**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Case Records—Board of Mediation and Arbitration, arbitration/awards and Fact-Finding Reports

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) General Nature and Purpose:

(i) Active case records contain information gathered by arbitrators, fact-finders and mediators by investigations and/or formal hearings. Needed for investigation, mediation, settlement, administrative adjudication and/or court litigation of grievance arbitration, interest arbitration, fact-finding and mediation cases.

(ii) Closed case records are retained for use in future related cases which may arise between the same parties

(iii) Grievance arbitration awards, fact-finding reports and interest arbitration awards contain information obtained from participants at formal hearings and are needed for guidance of parties and arbitrators in future cases.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Board Administrator
Board of Mediation and Arbitration
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Arbitrators, mediators, fact-finders, investigations, participants at formal hearings.

(G) Legal Authority for Collection, Maintenance and Use:

Section 31-91 to 31-100 of the General Statutes

(2) Categories of Personal Data:

(A) Personal data maintained may include the following:

(i) Employment histories

(ii) Employer names

(B) Other data maintained may include:

(i) Employee name

(ii) Social security numbers

(C) Categories of persons for whom records are maintained:

Employers and employees participating in proceedings before the Board of Mediation and Arbitration

(3) Use to be made of Personal Data:

(A) Routine use of records

Personal data is used by employees of the Board of Mediation and Arbitration, mediators, arbitrators and fact-finders for the purposes stated in subdivision (1) (d) of this subsection.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention Schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(v) **Board of Mediation and Arbitration—Administrative and Mailing Address files**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Administrative and Mailing Address Records

(B) Location of System:

Board of Mediation and Arbitration
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Combination or Manual:

Combination

(D) General Nature and Purpose:

(i) Administrative files relating to Board members, including records of appointments and payments.

(ii) Mailing address files are utilized for proper routing of correspondence to unions, employers and attorneys having frequent dealings with the Board.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Board Administrator
Board of Mediation and Arbitration
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

(i) Board members

(ii) Unions, employers, attorneys

(G) Legal Authority for Collection, Maintenance and Use:
Section 31-91 to 31-100 of the General Statutes
(2) Categories of Personal Data:
(A) Personal data maintained may include the following:
(i) Agency correspondence
(ii) Telephone records
(iii) Board member appointment and reappointment letters
(iv) Board Members' payment vouchers
(B) Other data maintained may include:
Names, addresses and telephone numbers of Board members and employers, union officials and attorneys dealing frequently with the Board.
(C) Categories of persons for whom records are maintained:
(i) Board members
(ii) Employers, unions and attorneys dealing frequently with the Board
(3) Uses to be made of Personal Data:
(A) Personal data is maintained by employees of the Board of Mediation and Arbitration, mediators, arbitrators and fact-finders for the purposes stated in subdivision (1) (D) of this subsection.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.
(w) **Regulation of Wages**
(1) General Nature and Purpose of Personal Data System:
(A) Name of System:
Regulation of Wages Records
(B) Location of System:
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(C) Automated, Manual or Combination:
Manual
(D) General Nature or Purpose:
Records are maintained of wage and hour investigations, non-payment of wage investigations and prevailing wage investigations of state and municipal public works projects for the purpose of providing information relating to compliance by employers with all wage and hour payment and prevailing wage rate laws.
(E) Title and Address of Official Responsible for the System of Records and To Whom

Requests for Disclosure or Amendment of the Records in the System Should be Made:
Director of Regulation of Wages
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(F) Routine Sources of Personal Data:
Employees and employers.
(G) Legal Authority for Collection, Maintenance and Use:
Sections 31-59 through 31-76a of the Connecticut General Statutes.
(2) Categories of Personal Data:
(A) The following categories of personal data are maintained:
(i) Business history
(ii) Employee history
(B) The following categories of other data may be maintained:
(i) Names of employers and employees
(ii) Addresses of employer and employees
(iii) Telephone numbers of employers and employees
(iv) Social Security numbers of employers and employees
(C) Categories of persons for whom records are maintained:
(i) Employers
(ii) Employees
(3) Uses to be made of the Personal Data:
(A) The entire staff of the Regulation of Wages Division uses the personal data for the purposes stated in subdivision (1) (D) of this subsection.
(B) Retention Schedule:
Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(x) **Office of Job Training and Skill Development—Apprentice Registration**
(1) General Nature and Purpose of Personal Data/System:
(A) Name of System:
Apprentice Registration Records
(B) Location of System:
Office of Job Training and Skill Development
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109
(C) Automated, Manual or Combination:

Combination

(D) General Nature and Purpose:

Apprentice Registration records are maintained for the purpose of keeping a record of sponsors and apprentices.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director, Office of Job Training and Skill Development
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine sources of data:

Apprentice, sponsor, trainer, school

(G) Legal Authority for Collection, Maintenance and Use:

Sections 31-51a through 31-51e of the General Statutes inclusive.

(2) Categories of Personal Data:

(A) Personal data maintained may include the following:

(i) Educational record
(ii) Parent or guardian
(iii) Trade experience credit
(iv) Training history
(v) Apprentice history
(vi) Veteran status

(B) Other data maintained may include the following:

(i) Names
(ii) Addresses
(iii) Date of birth
(iv) Sex
(v) Race
(vi) Social Security number

(C) Categories of persons for whom records are maintained: Apprentices, sponsors, trainers

(3) Use to be made of Personal Data:

(A) All employees assigned to the Office of Job Training and Skill Development use the personal data for the purposes stated in subdivision (1) (D) of this subsection.

(B) Record Retention:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(y) **Occupational Safety and Health (CONN-OSHA)**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

CONN-OSHA Records

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) General Nature and Purpose:

CONN-OSHA records are maintained for the purpose of retaining names and locations of safety and health inspections, consultations, education and training records, complaints, accidents, catastrophe-fatalities investigations, record keeping, statistics for the betterment of the program.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director of CONN-OSHA/Working Conditions
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Personal Data:

Employees, unions, employers, management officials of municipalities, commissioners of state agencies, commissions.

(G) Legal Authority for Collection, Maintenance:

Section 31-374 of the Connecticut General Statutes.

(2) Categories of Personal Data:

(A) The following categories of personal data may be maintained in the CONN-OSHA records:

(i) Inspection records
(ii) Records of complaints
(iii) Establishment inspection history
(iv) Consultation history
(v) Review commission decisions
(vi) Correspondence from management officials
(vii) Statements from employees

(B) The following categories of other data may be maintained in the CONN-OSHA records:

(i) Name
(ii) Address—business and residence
(iii) Telephone number

(iv) Occupation

(C) Categories of persons for whom records are maintained:

(i) Employers

(ii) Employees

(3) Use to be made of the Personal Data:

(A) OSHA records may be used by the Director, Assistant Director, Secretary, Investigators, Consultants and Staff Assistants for the purposes stated in subdivision (1) (D) of this subsection.

(B) OSHA records may be used for keeping a record of employers' inspection histories, names of witnesses and employees to substantiate alleged hazards documented by inspectors, names and locations of consultations, and in order to keep a record of those attending training sessions.

(C) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(z) **Working Conditions Records**

(1) General Nature and Purpose of Personal Data:

(A) Name of System:

Working Conditions Records

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) General Nature and Purpose:

Working conditions records are maintained to comply with State statutes in determining an individual's qualifications to operate a private employment agency; to ensure that industrial commercial establishments that operate health facilities for employees provide for reasonable standards of health, safety and comfort for the employees utilizing the facility; inspection of locations and observations of establishments concerned with the employment of minors; complaint investigations and reports relating to General Statutes concerning working conditions.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Director of CONN-OSHA/Working Conditions
Connecticut Labor Department

200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Employment agencies; corporations; law enforcement agencies; schools and establishments employing minors.

(G) Legal Authority for Collection, Maintenance and Use:

Sections 31-129 to 31-134, 31-14 to 31-18, 31-23, 31-51, 31-71 (f) of the General Statutes.

(2) Categories of Personal Data:

(A) Personal data maintained may include the following:

(i) Affidavits of character
(ii) Application for private employment agency license
(iii) Fingerprint card
(iv) Arrest information
(v) Bonding information
(vi) Investigations and reports relating to the General Statutes
(vii) Job applications
(viii) Previous employment histories

(B) Other data maintained may include the following:

(i) Name
(ii) Address
(iii) Date of birth
(iv) Sex
(v) Race
(vi) Occupation
(vii) Social security number
(viii) Telephone number
(ix) Marital status

(C) Categories of persons for whom records are maintained: Employers and employees

(3) Uses to be made of Personal Data:

(A) Working Conditions records may be used by the Director, Assistant Director, Secretary, Investigator and Staff Assistants for evaluating the qualifications of those applying for licensing or private employment agencies, to process reports and forms as required, keeping an account of investigations of complaints which do not fall under the aegis of OSHA, Regulations of Wages, Labor Relations or Mediation and Arbitration.

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working

hours.

(aa) **Business Records—Payroll**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Payroll Records

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) Purpose:

(i) Preparing and providing a history of payroll

(ii) Budgeting and personnel planning and evaluation

(iii) Cost accounting

(iv) Reporting—State and Federal

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Chief Fiscal Officer
Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Employee, previous employers of the employee, the employee's supervisor, attendance sheets, contracts, the Comptroller's Office, Department of Administrative Services, Division of Personnel and Labor Relations, & State insurance carriers

(G) Legal Authority:

State Personnel Act (Connecticut General Statutes Section 5-193 et seq.)

(2) Categories of Personal Data:

(A) Categories of Personal Data

(i) Financial information such as longevity payments, compensation plan, payroll and deductions

(ii) Employment information such as starting date, attendance information, vacation, sick and personal leave days accrued and used, title of position

(B) Categories of Other Data:

Name, address, employee number, social security number, date of birth, telephone number, marital status, insurance and retirement information, salary records, job class and bargaining unit, military service, garnishment of wages and payments related to garnishments, contracts, correspondence regarding deferred compensation/tax shelter annuity payroll deduction programs

(C) Categories of persons for whom records are maintained:

All current and former Labor Department employees

(3) Uses to be made of Personal Data:

(A) Routine Use of Records:

(i) Plan payroll and calculate budgets

(ii) Process promotions, reclassifications, transfers to another state agency and retirement

(iii) Assist in evaluation performance and other personnel functions

(iv) Maintain personnel documents required by the State Personnel Division, Office of the Comptroller, Group Insurance Carriers, and any other legitimate entity

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(bb) **Business Records—Accounts Payable/Purchasing**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Accounts Payable/Purchasing Records

(B) Location of System:

Connecticut Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Manual

(D) Purpose:

(i) Process employee travel reimbursement

(ii) Process payment to vendors for services

(iii) Payment of monthly rents and any contractual services

(iv) Purchasing

(E) Title and Business Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Chief Fiscal Officer
Connecticut Labor Department
200 Folly Brook Blvd.
Wethersfield, CT 06109

(F) Routine Sources of Data:

Employee, vendors, contracts

(G) Legal Authority for collection, maintenance and use:

Section 3-112, Section 3-114, Section 4-109 through 4-124 inclusive, Section 31-237 (b),

Section 31-250 and Section 31-259 of the General Statutes.

(2) Categories of Personal Data:

(A) Categories of Personal Data

(i) Automobile insurance information

(ii) Vendor information

(iii) Lease Agreements reflecting financial information on property costs

(B) Categories of Other Data:

Names of insurance companies, employees, vendors and their addresses, amount and dates of coverage, Federal identification numbers, social security numbers, job class & bargaining unit, class codes, telephone numbers, complaints regarding a vendor's service and/or delivery, bidding data

(C) Categories of Persons for whom records are maintained: Current and former Labor Department employees, vendors, landlords

(3) Uses to be made of Personal Data

(A) Routine Use of Records:

(i) Process employee travel reimbursement

(ii) Process payment to vendors for services

(iii) Pay monthly rents and any contractual services to vendors that are stated in the lease agreement

(iv) Maintain documents required by State Personnel Division, Office of the Comptroller, and any other legitimate entity

(v) Purchasing

(B) Retention Schedule:

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administrator as authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(cc) **Personnel Records**

(1) General Nature and Purpose of Personal Data System:

(A) Name of System:

Personnel Records

(B) Location of System:

Connecticut Labor Department
Personnel Services
200 Folly Brook Boulevard
Wethersfield, CT 06109

(C) Automated, Manual or Combination:

Combination

(D) Purpose:

Personnel records are maintained for the purpose of retaining payroll, health, discipline and related personnel information concerning the Connecticut State Labor Department's employees.

(E) Title and Address of Official Responsible for the System of Records and To Whom Requests for Disclosure or Amendment of the Records in the System Should be Made:

Personnel Administrator
Connecticut State Labor Department
200 Folly Brook Boulevard
Wethersfield, CT 06109

(F) Routine Sources of Data:

Routine sources for information retained in personnel records generally include the employee, previous employers of the employee, references provided by applicants, the employee's supervisor, the Comptroller's Office, Department of Administrative Services, Division of Personnel and Labor Relations, and State insurance carriers.

(G) Legal Authority:

Personal data in personnel records is collected, maintained and used under authority of the State Personnel Act, Connecticut General Statutes No. 5-193 *et seq*.

(2) Categories of Personal Data:

(A) Categories of personal data

(i) Medical or emotional condition or history
(ii) Criminal or police investigative records
(iii) Investigative records from other jurisdictions
(iv) Personal Data record sheets that are reviewed and updated periodically by individual employees

(B) Categories of other data:

(i) Addresses
(ii) Telephone numbers
(iii) Educational records
(iv) Social Security numbers
(v) Employment records
(vi) Marital status
(vii) Insurance and retirement information
(viii) Date of birth
(ix) Salary records
(x) Other reference records

(C) Categories of Persons for Whom Records are Maintained:

Personnel records are maintained on current and former employees of the Connecticut State Labor Department and applicants for employment with the Connecticut State Labor Department.

(3) Uses to be Made of Personal Data:

(A) Routine Use of Records

Employees of the Connecticut State Labor Department who are assigned personnel and payroll responsibilities use the personal data contained in the department's personnel records in processing promotions, reclassifications, transfers to another agency, retirement, and other personnel actions. Supervisors use the personal data when promotion, career counseling, or disciplinary action against such employee is contemplated, and for other employment-related purposes.

(B) Retention Schedule

Records are maintained in accordance with schedules prepared by the Connecticut State Library, Department of Public Records Administration and records retention schedules approved by the Public Records Administratoras authorized by Section 11-8a of the C.G.S. Retention schedules are on file at the Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109 and may be examined during normal working hours.

(Effective July 1, 1988)

Sec. 31-250-3. Maintenance of personal data—general

(a) Personal data will not be maintained by the Connecticut State Labor Department unless relevant and necessary to accomplish the lawful purpose of the agency. Where the agency finds irrelevant or unnecessary public records in its possession, the agency shall dispose of the records in accordance with its records retention schedule, and with the approval of the Public Records Administrator as per C.G.S. Section 11-8a, or if the records are not disposable under the records retention schedule, request permission from the Public Records Administrator to dispose of the records under Connecticut General Statutes Section 11-8a.

(b) The Connecticut State Labor Department will collect and maintain all records with accurateness and completeness.

(c) Insofar as it is consistent with the needs and mission of the Connecticut State Labor Department, the Agency, wherever practical, shall collect personal data directly from the persons to whom a record pertains.

(d) Employees of the Connecticut State Labor Department involved in the operations of the agency's personal data systems will be informed of the provisions of the (i) Personal Data Act, (ii) the agency's regulations adopted pursuant to Section 4-196, (iii) the Freedom of Information Act and (iv) any other state or federal statutes or regulations concerning maintenance or disclosure of personal data kept by the agency.

(e) All employees of the Connecticut State Labor Department shall take reasonable precautions to protect personal data under their custody from the danger of fire, theft, flood, natural disaster and other physical threats.

(f) The Connecticut State Labor Department shall incorporate by reference the provisions of the Personal Data Act and regulations promulgated thereunder in all contracts, agreements or licenses for the operation of a personal data system or for research, evaluation and reporting of personal data for the agency or on its behalf.

(g) The Connecticut State Labor Department shall have an independent obligation to insure that personal data requested from any other state agency is properly maintained.

(h) Only employees of the Connecticut State Labor Department who have a specific need to review personal data records for lawful purposes of the agency will be entitled to access to such records under the Personal Data Act.

(i) The Connecticut State Labor Department will keep a written up-to-date list of individuals entitled to access to each of the agency's personal data systems.

(j) The Connecticut State Labor Department will insure against unnecessary duplication of personal data records. In the event it is necessary to send personal data through interdepartment mail, such records will be sent in envelopes or boxes sealed and marked "confidential."

(k) The Connecticut State Labor Department will insure that all records in manual personal data systems are kept under lock and key and, to the greatest extent practical, are kept in controlled access areas.

(Effective July 1, 1988)

Sec. 31-250-4. Maintenance of personal data—automated systems

(a) To the greatest extent practical, automated equipment and records shall be located in a limited access area.

(b) To the greatest extent practical, the Connecticut State Labor Department shall require visitors to such limited access area to sign a visitor's log and permit access to said area on a bona-fide need-to-enter basis only.

(c) To the greatest extent practical, the Connecticut State Labor Department will insure that regular access to automated equipment is limited to operations personnel.

(d) The Connecticut State Labor Department shall utilize appropriate access control mechanisms to prevent disclosure of personal data to unauthorized individuals.

(Effective July 1, 1988)

Sec. 31-250-5. Maintenance of personal data—disclosure

(a) Within four business days of receipt of a written request therefore, the Connecticut State Labor Department shall mail or deliver to the requesting individual a written response in plain language, informing him or her as to whether or not the Agency maintains personal data on that individual, the category and location of the personal data maintained on that individual, and procedures available to review the records.

(b) Except where non-disclosure is required or specifically permitted by law, the Connecticut State Labor Department shall disclose to any person upon written request all personal data concerning that individual which is maintained by the Agency. The procedures for disclosure shall be in accordance with Connecticut General Statutes Sections 1-15 through 1-21k. If the personal data is maintained in coded form, the Agency shall transcribe the data into a commonly understandable form before disclosure.

(c) The Connecticut State Labor Department is responsible for verifying the identity of

any person requesting access to his/her own personal data.

(d) The Connecticut State Labor Department is responsible for ensuring that disclosure made pursuant to the Personal Data Act is conducted so as not to disclose any personal data concerning persons other than the person requesting the information.

(e) The Connecticut State Labor Department may refuse to disclose to a person medical, psychiatric or psychological data regarding that person if the Department determines that such disclosure would be detrimental to that person. In any case where the Department refuses disclosure, it shall advise the person of his or her right to seek judicial relief pursuant to the Personal Data Act.

(f) If the Connecticut State Labor Department refuses to disclose medical, psychiatric or psychological data to a person based on its determination that disclosure would be detrimental to that person and nondisclosure is not mandated by law, the Department shall, at the written request of such person, permit a qualified medical doctor to review the personal data contained in the person's records to determine if the personal data should be disclosed. If disclosure is recommended by the person's medical doctor, the Department shall disclose the personal data to such person; if nondisclosure is recommended by such person's medical doctor, the Department shall not disclose the personal data and shall inform such person of the judicial relief provided under the Personal Data Act.

(g) The Connecticut State Labor Department shall maintain a complete log of each person, individual, agency or organization who has obtained access to, or to whom disclosure has been made of, personal data under the Personal Data Act, together with the reason for each such disclosure or access. This log must be maintained for not less than five years from the date of such disclosure or access, or for the life of the personal data record, whichever is longer.

(Effective July 1, 1988)

Sec. 31-250-6. Contesting the content of personal data records

(a) Any person who believes that the Connecticut State Labor Department is maintaining inaccurate, incomplete or irrelevant personal data concerning him or her may file a written request with the Department for correction of said personal data.

(b) Within thirty days of receipt of such request, the Connecticut State Labor Department shall give written notice to that person that it will make the requested correction, or if the correction is not to be made as submitted, the Department shall state the reason for its denial of such request and notify the person of his or her right to add his or her own statement to his or her personal data records.

(c) Following such denial by the Connecticut State Labor Department, the person requesting such correction shall be permitted to add a statement to his or her personal data record setting forth what that person believes to be an accurate, complete and relevant version of the personal data in question. Such statements shall become a permanent part of the Department's personal data system and shall be disclosed to any individual, agency or

organization to which the disputed personal data is disclosed.

(Effective July 1, 1988)

Sec. 31-250-7. Uses to be made of personal data—general disclosure to individuals from whom personal data is requested

When an individual is asked to supply personal data to the Connecticut State Labor Department, the Department shall disclose to that individual, upon request, the name of the agency and the division within the agency which is requesting the data, the legal authority under which the agency is empowered to collect and maintain the personal data, the individual's rights pertaining to such records under the Personal Data Act and the agency's regulations, the known consequences arising from supplying or refusing to supply the requested personal data, and the proposed use to be made of the requested personal data.

(Effective July 1, 1988)

Requirements and Administrative Procedures for a Voluntary Shared Work Unemployment Compensation Pilot Program

Sec. 31-250-8. Definitions

For purposes of Sections 31-250-8 to 31-250-12, inclusive, of the Regulations of Connecticut State Agencies, the following definitions apply:

(a) "Administrator" means the Labor Commissioner of the state of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or the Administrator's designee.

(b) "Affected unit" means a specific department, shift or other unit of two or more employees that is designated by an employer to participate in a shared work plan.

(c) "Fringe benefits" means health insurance, retirement benefits received under a pension plan, paid vacation days, paid holidays, sick leave and any other employee benefit that is provided by an employer.

(d) "Normal weekly hours of work" means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty (40) hours and not including hours of overtime work.

(e) "Participating employee" means an employee who works a reduced number of hours under a shared work plan.

(f) "Participating employer" means an employer who has a shared work plan in effect.

(g) "Seasonal" means an employer who has a work base that is attached or dependent upon a particular time of year on an annual basis.

(h) "Shared work benefit" means an unemployment compensation benefit that is payable by the Administrator to an individual in an affected unit because the individual works a reduced number of hours under an approved shared work plan, as distinguished from the unemployment benefits otherwise payable under the unemployment compensation provisions of Chapter 567 of the Connecticut General Statutes.

(i) "Shared work plan" means a plan submitted by an employer, for approval by the Administrator, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs. "Shared work plan" includes a short-time compensation plan.

(j) "Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

(k) "Unemployment compensation" means any unemployment benefits administered by the Administrator under Chapter 567 of the Connecticut General Statutes or pursuant to federal law, under agreement with the U.S. Department of Labor, including, but not limited to Extended Benefits, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemen (UCX), Trade Readjustment Allowances (TRA), Disaster Unemployment Assistance (DUA) and Emergency Unemployment Compensation (EUC).

(Effective December 18, 1992; Amended June 6, 2014)

Sec. 31-250-9. Application for shared work

An employer seeking to participate in a shared work unemployment compensation program, also known as a short-time compensation program as set forth in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, shall submit a signed written shared work plan to the Administrator for approval. As a condition of approval, a participating employer shall agree to furnish the Administrator with such reports relating to the operation of the shared work plan as the Administrator may request. The participating employer shall monitor and evaluate the operation of the established shared work plan as directed by the Administrator.

(Effective December 18, 1992; Amended June 6, 2014)

Sec. 31-250-10. Criteria for shared work plan

The Administrator may approve a shared work plan based upon compliance with the following conditions:

(a) The shared work plan applies to and identifies a specific affected unit.

(b) Those employees within the affected unit who have been designated as shared work plan participants are identified by name and social security number.

(c) Prior to July 1, 2014, the shared work plan reduces the normal weekly hours of work for the participating employees in the affected unit by not less than twenty (20) percent nor more than forty (40) percent. For shared work plans effective on or after July 1, 2014, the shared work plan reduces the normal weekly hours of work for the participating employees in the affected unit by not less than ten (10) percent nor more than sixty (60) percent.

(d) The shared work plan shall state that: (1) fringe benefits will continue to be provided to employees in affected units as though their normal weekly hours of work had not been

reduced, and (2) service credits toward seniority shall accrue during the operation of the shared work plan at a rate at least commensurate with the amount of reduced hours actually worked.

(e) The participating employer certifies that the implementation of a shared work plan and the resulting reduction in work hours are in lieu of layoffs that would affect at least ten (10) percent of all employees in the affected unit and would otherwise result in an equivalent reduction in work hours.

(f) The participating employer has filed all reports required to be submitted pursuant to Sections 31-250-8 to 31-250-12, inclusive, of the Regulations of Connecticut State Agencies and either (1) has paid all contributions due for all past and current contribution periods or (2) has made all payments in lieu of contributions due for all past and current payments in lieu of contributions periods as required under sections 31-225 and 31-225a of the Connecticut General Statutes.

(g) The participating employer certifies that participation in the shared work plan and its implementation is consistent with the employer's obligations under applicable federal and state laws.

(h) If any of the participating employees under a shared work plan are covered by a collective bargaining agreement, the shared work plan must be approved in writing by the participating employees' collective bargaining representative. In the absence of any bargaining representative, the plan must contain a certification by the employer that such employer has made the proposed plan, or a summary thereof, available to each employee in the affected group for inspection and comment for a period of at least seven (7) days, and copies of the memorandum to the employees and any comments received must be attached.

(i) A shared work plan applies to full-time and part-time permanent employees and is not implemented to subsidize seasonal employers during any off-season period.

(Effective December 18, 1992; Amended June 6, 2014)

Sec. 31-250-11. Eligibility for shared work compensation

(a) An individual is eligible to receive shared work benefits with respect to any week in which the Administrator finds that:

(1) The individual is a participating employee in an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) The individual is able to work and is available for additional hours of work or full-time work with the participating employer;

(3) For shared work plans effective prior to July 1, 2014, the individual's normal weekly hours of work have been reduced by at least twenty (20) percent but not more than forty (40) percent, with a corresponding reduction in wages. For shared work plans effective on or after July 1, 2014, the individual's normal weekly hours of work have been reduced by at least ten (10) percent but not more than sixty (60) percent, with a corresponding reduction in wages; and

(4) Notwithstanding any other provisions of these regulations relating to availability for work and actively seeking work, the individual is available for the individual's normal hours of work with the participating employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the Administrator such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998.

(b) An individual who is eligible for shared work benefits shall be exempt from the work search requirements contained in Section 31-235 (a) of the Connecticut General Statutes and Sections 31-235-22 to 31-235-26, inclusive, of the Regulations of Connecticut State Agencies. In addition, an individual eligible for shared work benefits shall not be subject to the provisions of Section 31-229 of the Connecticut General Statutes relating to partial unemployment benefits. Wages from other than the shared work employer shall be disregarded in the calculation of the shared work benefit.

(c) For certified weekly claims effective prior to the week ending July 5, 2014, an individual who is eligible for shared work benefits shall not be eligible to receive a dependency allowance. For certified weekly claims effective on or after the week ending July 5, 2014, an individual who is eligible for shared work benefits shall be eligible to receive a dependency allowance.

(d) The Administrator shall not pay shared work benefits to an individual for any week in which the individual performs work for the participating employer in excess of the reduced hours established under the shared work plan, unless there is a corresponding modification to the plan pursuant to subsection (b) of Section 31-250-12 of the Regulations of Connecticut State Agencies.

(e) No individual shall receive shared work benefits and regular unemployment compensation benefits in an amount that exceeds the maximum total benefits payable to the claimant in a benefit year in accordance with Section 31-231b of the Connecticut General Statutes.

(f) An individual who has received all of the shared work benefits and regular unemployment compensation benefits available to such individual in a benefit year is an exhaustee for purposes of Sections 31-232b to 31-232k, inclusive, of the Connecticut General Statutes and is entitled to receive extended benefits under such sections, provided the claimant is otherwise eligible for such benefits.

(g) If an individual who is eligible to receive shared work benefits has a prior overpayment which is still outstanding, the Administrator shall offset such overpayment from shared work benefits in accordance with Section 31-273 of the Connecticut General Statutes.

(h) If an individual who is eligible to receive shared work benefits has been identified as having outstanding child support obligations, the Administrator shall reduce shared work benefits in accordance with Section 31-227 (h) of the Connecticut General Statutes.

(Effective December 18, 1992; Amended June 6, 2014)

Sec. 31-250-12. Program administration

(a) The Administrator will approve or deny a shared work plan, in writing, no later than thirty (30) days after the date the shared work plan is received by the Administrator. If the Administrator denies a shared work plan, the Administrator will specify the reasons for the denial. The reasons for rejection shall be final and not subject to appeal. If rejected, the employer may submit an amended plan for approval not earlier than seven (7) days after the date of the rejection. A shared work plan shall be effective on the date it is approved by the Administrator and shall expire at the end of the twenty-sixth (26^{th}) week after the effective date of the shared work plan. Such plan may be renewed for up to an additional twenty-six (26) weeks.

(b) An approved shared work plan may be modified after it has become operational by the employer with the acquiescence of employee representatives if, in the opinion of the Administrator, the modification is not substantial and is consistent with the purpose of the original shared work plan. The Administrator shall approve or disapprove such modifications, without changing the expiration date of the original plan. The disapproval of a modification shall be final and not subject to appeal. Where a requested modification is substantial, the employer may request that the Administrator terminate the existing plan and consider the employer's application for a new plan.

(c) The Administrator may revoke approval of a plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons therefor. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria upon which approval of the plan was based. Any revocation shall be final and shall not be subject to appeal.

(d) The Administrator shall pay to an individual who is eligible for shared work benefits a weekly amount equal to the individual's regular weekly benefit rate for a period of total unemployment as provided in Section 31-228 of the Connecticut General Statutes, multiplied by the nearest full percentage of the reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of one dollar, the Administrator shall reduce the amount to the next lowest multiple of one dollar. All shared work benefits shall be payable from the unemployment compensation fund established pursuant to Section 31-261 of the Connecticut General Statutes.

(e) An employer's chargeability under a shared work plan will be subject to the provisions of Section 31-225a of the Connecticut General Statutes. Employers liable for payments in lieu of contributions in accordance with section 31-225 of the Connecticut General Statutes shall have shared work benefits attributed to service in their employ in the same manner as unemployment compensation is attributed.

(f) An individual who does not work during a week for the shared work employer and who is otherwise eligible for benefits shall be paid regular unemployment benefits and the

week shall not be counted as a week for which shared work benefits were received.

(Effective December 18, 1992; Amended June 6, 2014)

Agency
Department of Labor

Subject
Interstate Reciprocal Agreement Relating to Transfer of Contributions Between the States of New York and Connecticut

Inclusive Sections
§§ 31-255-1—31-255-9

CONTENTS

Interstate Reciprocal Agreement Relating to Transfer of Contributions Between the States of New York and Connecticut

Sec. 31-255-1. Definitions

a. "Covering state" means the state under the law of which an employer or an employing unit is or was required to pay contributions with respect to wages for employment.

b. "Refunding state" means the state to which an employer or employing unit has paid in error contributions required to be paid to the covering state.

(Effective October 12, 1978)

Sec. 31-255-2. Transfer of contributions

Upon agreement between the signatories hereto that certain services concerning which payment of contributions was made by an employer to a refunding state constitute employment in the covering state, the refunding state will transfer to the covering state the aggregate amount of the employer contributions erroneously paid relating to such services, together with interest and penalties received by the refunding state to the extent of, but not to exceed, the contributions, interest and penalties due and owing the covering state, provided that such a transfer shall be made only upon the express consent of the employer concerned.

(Effective October 12, 1978)

Sec. 31-255-3. Repayment of benefits paid by the refunding state

Whenever benefits have been paid by the refunding state based on employment or wages paid for employment finally agreed to be covered by the covering state, the covering state will reimburse the refunding state for the aggregate amount of such benefits. Where a worker's base period employment was for two or more employers, the amount to be reimbursed shall be that proportion of the total benefits paid to such worker as his base period wages used by the refunding state in the employment finally determined to be covered under the law of the covering state bears to his total base period wages.

(Effective October 12, 1978)

Sec. 31-255-4. Preparation of the refund check

The check for the transfer of contributions erroneously paid shall be prepared by the refunding state to the joint order of the covering state and the employer. The refunding state, prior to the transmittal of the check to the covering state, will obtain an endorsement by the employer of the check so drawn, such endorsement to serve as a written release of the refunding state by the employer.

(Effective October 12, 1978)

Sec. 31-255-5. Effective dates of payment

The covering state shall, for all purposes of its law, consider the contributions transferred

under this agreement to have been paid to it as of the date or dates such contributions were paid to the refunding state. The covering state shall, for all purposes of its law, consider benefits which were erroneously paid by the refunding state and for which reimbursement was made to the refunding state to have been paid by it as of the date or dates such benefits were paid by the refunding state. It is expressly understood and agreed that the covering state may prescribe the extent of any retroactive recomputation of contribution rate.

(Effective October 12, 1978)

Sec. 31-255-6. Unexpired benefit years

If at the time a transfer of contributions to another state is in process, the refunding state is paying benefits to claimants whose wages or employment do not constitute wages or employment under the law of the refunding state, but that of the covering state, the claims shall be completed by the refunding state before billing the covering state for benefits paid.

(Effective October 12, 1978)

Sec. 31-255-7. Transfer of records

The refunding state shall forward to the covering state such of its records or transcripts thereof as may be required by the covering state for current or future benefit determinations.

(Effective October 12, 1978)

Sec. 31-255-8. Effective date

This agreement shall become effective as of the date on which it is signed by the duly authorized representatives of both states.

(Effective October 12, 1978)

Sec. 31-255-9. Revocation

This agreement may be revoked by either state by giving the other state thirty days' notice in writing of its intent to terminate, except that such revocation shall apply only to matters not theretofore brought to the attention of one state by the other state. However, matters which were the subject of prior negotiation shall be brought to a conclusion regardless of the date of termination.

(Effective October 12, 1978)

Agency

Department of Labor/Employment Security Board of Review

Subject

Registration and Rules of Conduct for Authorized Agents Providing Representation for a Fee

Inclusive Sections

§§ 31-272-1—31-272-18

CONTENTS

Registration and Rules of Conduct for Authorized Agents Providing Representation for a Fee

Sec. 31-272-1. Definitions

As used in sections 31-272-1 through 31-272-18 of these regulations, inclusive, unless the context clearly indicates otherwise:

"Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut, 06109.

"Agency complaint" means a Board finding of probable cause of authorized agent misconduct from which further proceedings will follow.

"Appeals Division" means the Employment Security Appeals Division consisting of the Board members, the Referees employed in the Referee Section and all other supporting staff members employed in that division for discharge of its responsibilities.

"Attorney" means an attorney-at-law admitted to practice law in Connecticut.

"Authorized agent" means an individual, organization or business that provides representation to parties before a Referee or the Board for a fee. In the case of an individual authorized agent representing an organization or business that provides representation to parties for a fee, both the individual and the organization or business must register with the Board and both will be held responsible as the authorized agents. An attorney is not an authorized agent for purposes of these regulations. If an attorney provides service to an organization or business which is an authorized agent, the organization or business must register with the Board and will be considered the authorized agent for purposes of these regulations.

"Board" means the Employment Security Board of Review.

"Chairperson" means the Chairperson of the Employment Security Board of Review.

"Client" means the party being represented by the authorized agent.

"Filed" means the receipt of a document by the office authorized and designated to receive such document.

"Party" means the following parties to an appeal:

(a) the claimant whose unemployment compensation claim is involved;

(b) any employer (1) against whom charges may be made or tax liability assessed due to a decision by the Administrator or the Appeals Division and who has appealed that decision; or (2) from whom the claimant's separation is an issue in the appeal;

(c) the Administrator.

"Referee" means an Employment Security Appeals Division Referee.

(Effective July 1, 1992)

Sec. 31-272-2. Registration

(a) An authorized agent who represents a party for a fee may not appear before a Referee or the Board after July 1, 1992, unless the agent is registered with the Board.

(b) Each authorized agent shall register at any Appeals Division office or with the Board. An authorized agent who is an individual shall provide the registrant's name, permanent

address and telephone number. An authorized agent which is an organization or business shall provide the name, local address and telephone numbers, and address and telephone number of the principal place of business, if different, and the names of principals or others authorized to act on behalf of the organization and to receive notice. Any changes in identifying information shall be promptly reported to the Board.

(c) Upon registration, an authorized agent will be assigned a registration number that should be used in all appearances before a Referee and the Board. An individual appearing on behalf of an organization or business providing representation to parties before a Referee or the Board for a fee must indicate the registration number of the individual, unless that individual is an attorney, as well as the registration number of the organization or business. An individual may indicate only the registration number of the organization or business if that number reflects both the organization or business and the individual agent.

(d) An authorized agent shall provide the Appeals Division notice of its status as a representative of record for a party either by filing a power of attorney with the Administrator or by submitting a written statement to the Appeals Division, signed by the party and designating the individual or organization as the authorized agent.

(e) Each registrant shall file notice with the Board within thirty days after the agent ceases activity as an authorized agent.

(Effective July 1, 1992)

Sec. 31-272-3. Communication with the client

(a) An authorized agent shall keep a client reasonably informed about the status of any matter before the Appeals Division. An authorized agent shall verify with the client the accuracy of any information it provides to the Appeals Division.

(b) An authorized agent shall promptly notify the client of any scheduled proceedings before the Appeals Division to allow time for case preparation and the scheduling of witnesses. An authorized agent will ensure that the client is familiar with the contents of "An Employer's Guide to the Appeals Process," "A Claimant's Guide to the Appeals Process," and any other relevant information that the Board provides for the education of parties. Clients should be apprised of the consequences of not appearing and the importance of participation at all stages of the proceedings and of producing first-hand testimony.

(c) If a client determines that it does not wish to pursue an appeal, a request for withdrawal of the appeal should be made in writing, or communicated orally and followed by a writing, in a timely fashion. If the client and the authorized agent determine that there is no basis for an appeal, that the appeal is frivolous, or that the client is not interested in pursuing the appeal, the appeal should be withdrawn. The appeal should be withdrawn as soon as possible, preferably prior to the scheduling of a hearing.

(Effective July 1, 1992)

Sec. 31-272-4. Postponement requests

(a) Requests to postpone a hearing for good cause must be made as soon as possible after

the issuance of the notice of hearing before the Referee or Board. Last minute requests will not be granted except under extraordinary circumstances.

(b) If an authorized agent believes that a critical witness will not be available for a scheduled hearing and requests a postponement in order to produce the witness, the authorized agent shall, after consulting with the client, provide the Appeals Division with the name, address, and title of the witness, the reason the witness is unable to attend, the general nature of the witness's testimony, and the reason another witness would not testify. Upon request, the authorized agent shall submit a written statement of its request and supporting documentation or sworn affidavit to the Appeals Division.

(c) If a postponement request is denied, the authorized agent shall notify the client that the hearing will go forward as scheduled and advise the client to appear. In the event that a postponement request made pursuant to subsection (b) of this section is denied, the client should be advised to appear with or without the critical witness or another witness. The client should be advised that it may renew the postponement request at the hearing by requesting a continuance of the hearing.

(d) In the event that a postponement request is properly denied and the agent or the client does not appear, no further hearings will be scheduled at the client's request.

(Effective July 1, 1992)

Sec. 31-272-5. Preparation of the case

(a) An authorized agent shall provide competent representation to a client. The authorized agent shall explain the proceedings and prepare the case with the client and any witnesses before the hearing is called, shall be acquainted with the facts and legal issues involved, and shall arrange for producing witnesses and documentary evidence at the Referee's hearing.

(b) An authorized agent shall make a reasonable effort to produce the testimony of the first-hand witnesses in the case.

(c) An authorized agent who wants to inspect or review a case file may do so prior to the date of the Referee's hearing. If it is necessary for the agent to review the file on the day of the hearing, the agent must make arrangements with the Appeals Division in advance of the scheduled hearing time.

(d) An authorized agent shall not delay the hearing or disturb the progress of other cases or the functioning of the Appeals Division in an effort to view a case file or consult with its client or witnesses.

(Effective July 1, 1992)

Sec. 31-272-6. Conduct of the hearing

(a) An authorized agent shall be prepared to go forward with its case and to produce all necessary evidence and witnesses at the time the Referee's hearing is scheduled to commence.

(b) An authorized agent shall provide to all parties copies of any documentary evidence

to be admitted into the record.

(c) An authorized agent shall not engage in conduct that disrupts the proceedings.

(Effective July 1, 1992)

Sec. 31-272-7. Prohibited conduct in the course of representing a party at a hearing

(a) An authorized agent shall not counsel a client to engage, or assist a client in engaging, in conduct the agent knows or should know to be criminal, or fraudulent, or in violation of these regulations.

(b) An authorized agent shall not knowingly or intentionally:

(1) make a false statement or representation of material fact or law to the Administrator or the Appeals Division;

(2) offer evidence it knows to be false or counsel a witness or party to testify falsely;

(3) fail to disclose a material fact or statement;

(4) unlawfully obstruct another party's access to evidence or destroy or conceal evidence;

(5) assert personal knowledge of the facts unless testifying as a witness;

(6) refer at a hearing to a matter which the agent does not reasonably believe is relevant or is not supported by evidence;

(7) seek to improperly influence the Administrator or the Appeals Division.

(c) An authorized agent shall not engage in any *ex parte* communication with the Administrator or the Appeals Division concerning the merits of any appeal pending before the Appeals Division unless all other parties have waived their right to participate. Questions relating strictly to the procedural aspects of a case may be directed to the Appeals Division and the communication will be documented for the record.

(Effective July 1, 1992)

Sec. 31-272-8. Misconduct

It is misconduct for an authorized agent to:

(a) violate or attempt to violate the rules of conduct set forth in these regulations or knowingly assist or induce another to do so, or disobey an obligation under the rules of conduct or an order by the Board;

(b) commit a criminal act in the course of the representation;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct which is prejudicial to the administration of the Unemployment Compensation Act;

(e) state or imply an ability to, or attempt to, improperly influence the Administrator or the Appeals Division, or improperly influence any other state agency or official in a matter before the Appeals Division.

(f) in dealing on behalf of a client with another party, to state or imply that the agent is disinterested when the agent knows or reasonably should know that the other party misunderstands the agent's role in the matter.

(Effective July 1, 1992)

Sec. 31-272-9. Penalties

(a) A failure to comply with an obligation or prohibition imposed by these rules of conduct or an order by the Board is a basis for invoking the disciplinary process set forth in these regulations.

(b) If, in its final decision, the Board concludes that an authorized agent has committed misconduct, the Board may order the agent to comply with all applicable statutory and regulatory requirements and may impose a penalty. The Board may, upon finding mitigating circumstances or that corrective action has been taken, dismiss the complaint. An authorized agent who is determined to have violated the rules of conduct or otherwise committed misconduct within the meaning of section 31-272-8 may be subjected to one or more of the following:

(1) a letter of reprimand;
(2) an order to comply with applicable law;
(3) suspension of registration with the Appeals Division;
(4) revocation of registration with the Appeals Division;
(5) civil fines not to exceed one thousand dollars per violation.

(c) In assessing civil penalties, the Board shall distinguish between serious violations which potentially undermine the integrity of the appeals process and lesser violations. Penalties shall be assessed based on the gravity of the violation, the experience of the authorized agent, the authorized agent's history of previous violations or complaints filed of a similar or different nature, the number of violations identified, whether the authorized agent was in violation of an order previously issued by the Board, and the existence of mitigating circumstances. If the Board finds repeated violations, a serious violation, or a failure to comply with the Board's enforcement orders, the maximum penalty of revocation of registration and a civil fine of $1,000 per violation may be imposed. For less serious violations or first offenses, a lesser penalty will be imposed.

(Effective July 1, 1992)

Sec. 31-272-10. Filing of the complaint

(a) Any person may file with the Board a written complaint alleging misconduct by an authorized agent. The administrator, any member of the Labor Department, or a member of the Appeals division, including the Board or any member, may initiate and file a complaint alleging misconduct by an authorized agent. The complaint shall contain the name of the authorized agent, the party or parties being represented, and sufficient information to identify the incident or incidents of alleged misconduct. When, during the commission of the alleged misconduct, an individual authorized agent is employed by an organization or business which is also an authorized agent, both the individual agent and the organization may be named in the complaint. The Board may seek additional information it deems necessary to initiate an investigation, and may add additional authorized agents to the complaint if it deems it appropriate.

(b) Within ten calendar days of the receipt of the complaint, the Board will mail notice

that the complaint has been filed to the complainant, the authorized agent against whom the complaint is filed, and all parties and agency staff members directly involved in any proceeding in which misconduct is alleged. The notice shall include the name of the complainant, a copy of the complaint, notice that the authorized agent is entitled to representation in any proceeding before the Board, and instructions regarding the right to respond to the complaint in writing within twenty-one (21) calendar days of the mailing date of such notice. Such response may include any information, evidence or argument that the authorized agent deems relevant to the complaint. The continuation and completion of an investigation shall not be contingent upon such response.

(c) Any complaint filed pursuant to these regulations must be filed with the Board within ninety (90) calendar days of the conduct which is the subject of the complaint.

(d) The complainant and the authorized agent shall notify the Board in writing of any corrections or changes of identifying information, address or telephone number during the pendency of the proceedings on the complaint.

(Effective July 1, 1992)

Sec. 31-272-11. Investigation of the complaint

(a) Upon receipt of a complaint filed in accordance with section 31-272-10 of these regulations, an investigation will be undertaken. The Chairperson, as executive head of the Appeals Division, may appoint as investigator any person employed in the Appeals Division who has not been directly involved in the proceeding in which the misconduct is alleged to have occurred.

(b) The Board shall review the results of the investigation and render a determination that probable cause or no probable cause exists that the authorized agent has committed misconduct no later than ninety (90) days from the date the complaint was filed.

(c) At any point during the pendency of the investigation, the Board may effect an informal resolution of the complaint which is mutually acceptable to the complainant and the authorized agent.

(d) Where the Board finds probable cause that misconduct within the meaning of section 31-272-8 of these regulations has occurred, it may, after considering the wilfulness and seriousness of the violation alleged, the results of the investigation conducted pursuant to subsection (b), the presence of extenuating circumstances, and the existence of previous violations or complaints of similar conduct, issue an agency complaint. The complaint shall be mailed to the authorized agent. A copy of such complaint shall also be mailed to the complainant. The authorized agent will be mailed a notice of hearing before the Board or a designated hearing officer, pursuant to section 31-272-13 of these regulations. The notice shall be issued at least ten days before the scheduled hearing.

(e) Where the Board, as a result of an investigation conducted pursuant to this section, finds that there is no probable cause that misconduct by the authorized agent has occurred, or declines to issue an agency complaint, it shall so advise the complainant and the authorized agent against whom the complaint was filed, and shall dismiss the complaint.

(f) The Board may, in its discretion, reconsider any agency complaint or dismissal issued pursuant to subsection (d) or (e) of this section, in response to a written request by the complainant or authorized agent, or on its own initiative.

(Effective July 1, 1992)

Sec. 31-272-12. Prehearing conference; resolution and reconsideration prior to an adjudicative hearing

(a) At any time after the issuance of an agency complaint and determination of probable cause of misconduct, and before the commencement of a hearing, the Board may order, or a complainant or an authorized agent may request, an informal prehearing conference. The granting or denial of a request for a prehearing conference is within the discretion of the Board or hearing officer designated by the Board.

(b) A prehearing conference may be held for any of the following purposes:

(1) to discuss the informal disposition of the complaint;

(2) to simplify or schedule matters to be heard at the formal hearing;

(3) to narrow the scope of the issues in dispute;

(4) to obtain stipulations as to matters of fact;

(5) to stipulate as to the qualifications of expert witnesses to testify at the hearing.

(c) The prehearing conference need not be recorded, but a written record will be made as to any stipulation agreed upon.

(d) From the issuance of an agency complaint finding probable cause pursuant to subsection (b) of section 31-272-11 of these regulations until the commencement of a hearing, the Board may in its discretion effect resolution of any complaint by way of a settlement agreement. Any settlement agreement shall contain:

(1) the signatures of the authorized agent or its representative and the Chairperson of the Board;

(2) an express waiver of the right to challenge or contest the validity of the agreement or any order contained therein;

(3) a statement that the agreement represents a final disposition of the complaint which shall have the same force and effect as an order entered after a formal hearing; and

(4) any other provisions appropriate to the settlement.

(e) Once a hearing has commenced, an informal disposition may be made. A settlement agreement may be negotiated by an authorized agent and the Appeals Division. The acceptance of an agreement is within the discretion of the Board. The agreement shall contain the information required in subsection 31-272-12 (d). A settlement agreement adopted pursuant to this subsection or to subsection (d) shall be deemed to have the same force and effect as an order to comply with applicable law issued under section 31-272-9 (b) (2) of these regulations.

(Effective July 1, 1992)

Sec. 31-272-13. Conduct of hearings

(a) Hearings shall be presided over by the Board or by one or more hearing officers designated by the Chairperson. A hearing officer shall be designated in any case in which the complaint is filed by the Board or one of its members. The designated hearing officer shall not have initiated the complaint, personally carried out the function of investigator, or otherwise been personally involved with the case.

(b) An authorized agent may challenge the interest of the designated hearing officer by way of a request to the Board which specifically sets forth all reasons for the request. A written request shall be filed with the Board as soon as the hearing officer is appointed. The Board shall decide the challenge within ten days, and shall appoint another person if it grants the challenge. The mere fact that an individual has previously served as a hearing officer or decided a case involving the authorized agent or a similar issue need not, in itself, preclude the person from serving as the hearing officer.

(c) The Board or hearing officer shall have the power to:

(1) regulate the course of the hearing and the conduct of the parties and their counsel therein;

(2) insure that all testimony is given under oath or affirmation;

(3) rule upon offers of proof and receive evidence;

(4) consider and rule upon all motions; and

(5) require any additional written and/or oral argument.

(d) The Board or hearing officer shall have the power to compel attendance of witnesses by subpoena and to require the production of records, physical evidence, papers and documents.

(e) The investigator will introduce the relevant evidence produced by the investigation into the record of the hearing. The authorized agent and the investigator shall have the right to inspect and copy relevant and material records, papers and documents not in their possession; present evidence and argument on all issues involved; cross-examine witnesses; enter motions and objections; and assert other rights essential to a fair hearing.

(f) Persons not named in the notice of hearing may, at the discretion of the hearing officer, be given an opportunity to present oral or written statements. The hearing officer may require any such statement to be given under oath or affirmation, and shall give such statements the weight the hearing officer determines is appropriate given the nature of the complaint, the statement, and its relevance.

(g) All adjudicative hearings in matters concerning the conduct of authorized agents shall be recorded.

(h) The Appeals Division shall maintain a record which includes (1) written notices related to the case; (2) all complaints, petitions, motions, and intermediate rulings; (3) evidence received or considered; (4) offers of proof, objections and rulings thereon; (5) the recording or the transcript of the hearing; (6) the proposed final decision, if any, and any exceptions and briefs filed; (7) the final decision; and (8) any communications with the

Appeals Division which have been documented.

(Effective July 1, 1992)

Sec. 31-272-14. Transcript of the proceedings

The authorized agent, complainant or any other person may file a request for a written transcript of the proceedings. The person requesting the transcript shall pay the cost of such transcript.

(Effective July 1, 1992)

Sec. 31-272-15. Proposed decision

(a) In those cases heard by a hearing officer, the hearing officer shall make a proposed final decision. The proposed final decision shall be served by United States mail upon the authorized agent and investigator and an opportunity shall be afforded to file with the hearing officer exceptions to the proposed final decision and present briefs.

(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and findings of fact and conclusions of law necessary to the decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed.

(Effective July 1, 1992)

Sec. 31-272-16. Final decision

(a) When the hearing is conducted by a hearing officer, the final decision shall be rendered by a majority of the Board. The final decision may be based on the proposed final decision and any exceptions and briefs filed. When the hearing is conducted by the Board, the final decision shall be based on the hearing record and any briefs filed. The Board shall adopt the proposed final decision rendered by the hearing officer as its own in any case in which the complaint was filed by the Board or one of its members.

(b) A final decision shall be in writing and shall include the Board's findings of fact and conclusions of law necessary to its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed.

(c) The Board shall state in the final decision the name and address of the complainant, the authorized agent, and, if appropriate, the party represented by the agent.

(d) The final decision shall be served on the authorized agent, investigator and complainant by United States mail. The final decision shall be effective when mailed or on a later date specified by the Board.

(e) When the hearing is conducted by a hearing officer, the Board shall render a final decision within ninety days from the date set for the filing of briefs by the hearing officer in the proposed final decision. When the hearing is conducted by the Board, the Board shall render a final decision within ninety days of the close of evidence or the date set by the Board for the filing of briefs, whichever is later.

(Effective July 1, 1992)

Sec. 31-272-17. Reconsideration

(a) The Board, on its own motion, or an authorized agent may, within thirty days after the issuance of the final decision, file a petition for reconsideration of the decision on the ground that: (1) an error of fact or law should be corrected; (2) new evidence has been discovered which materially affects the merits of the case and which for good cause was not presented in the earlier proceeding; or (3) other good cause for reconsideration exists. Within twenty-five days of the filing of the petition, the Board shall determine whether the ends of justice require reconsideration. If the Board does not grant the petition within twenty-five days of such filing, it shall be considered a denial of the petition. If the Board determines that reconsideration is required, the Board shall proceed to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision of the Board.

(b) At any time upon a showing of substantially changed conditions, the Board may reverse or modify any final decision to revoke or suspend an authorized agent's registration with the Appeals Division at the request of the authorized agent or on the Board's own motion. The authorized agent and complainant shall receive notice of the Board's intent to modify or reverse its prior decision and may, within ten days of the mailing of the notice, request an opportunity to be heard. The request shall state the reason the person requests the opportunity to be heard, a description of any evidence, testimony or argument that the person desires to introduce, and an explanation of the importance of such evidence, testimony or argument. If the Board determines that the ends of justice so require, the Board may order that a further hearing be scheduled before the Board or hearing officer, as the Board may direct.

(c) The Board may, without further proceedings, modify a final decision to correct any clerical error.

(Effective July 1, 1992)

Sec. 31-272-18. Record of complaints

The Board of Review shall maintain a record of all complaints filed and the disposition of each complaint. These records may be utilized in determining an appropriate penalty in any future complaints.

(Effective July 1, 1992)

Agency
Department of Labor

Subject
Collection of Overpayments of Unemployment Compensation Benefits

Inclusive Sections
§§ 31-273-1—31-273-9

CONTENTS

Collection of Overpayments of Unemployment Compensation Benefits

Sec. 31-273-1. Definitions

For purposes of sections 31-273-1 through 31-273-9 inclusive of these regulations, the following definitions apply:

(a) "Administrator" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designated representative.

(b) "Benefits" means unemployment compensation payable to an individual with respect to his unemployment under Chapter 567 of the Connecticut General Statutes.

(c) "Benefit year" means the period commencing with the beginning of the week with respect to which an individual has filed a valid initiating claim and continuing through the Saturday of the fifty-first week following the week in which it commenced, provided no benefit year shall end until after the end of the third complete calendar quarter, plus the remainder of any uncompleted calendar week which began in such quarter, following the calendar quarter in which it commenced.

(d) "Repayment schedule" means a mandatory timetable established by the administrator whereby the individual on a monthly basis, or such other basis as the administrator determines appropriate, reduces his overpayment balance by the issuance of a check, money order or such other payment to the administrator as is deemed acceptable by the administrator until the account is paid in full.

(e) "Wage execution" means a process executed in accord with the provisions of Section 52-361a of the Connecticut General Statutes.

(f) "Weekly benefit amount" means an individual's total unemployment benefit rate, as defined in Section 31-231a of the Connecticut General Statutes, plus any dependency allowance for which the individual has been determined eligible, pursuant to Section 31-234 of the Connecticut General Statutes, for a given week.

(Effective March 29, 1988; Amended July 1, 1996)

Sec. 31-273-2. Non-fraud overpayments: Notice, hearing and determination

(a) Where the Administrator determines that an individual has through error received any sum as benefits while any condition for the receipt of benefits imposed by Chapter 567 of the General Statutes was not fulfilled with respect to the individual's claim, or that an individual has received a greater amount of benefits than was due such individual, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid. The Administrator shall take such action unless the Administrator determines that repayment or recoupment would defeat the purpose of the benefits or be against equity and good conscience and should be waived pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies. The Administrator shall charge the individual with an overpayment only so long as such error has been discovered and brought to the individual's attention within one year of the date of receipt of such benefits, except as provided in subsection (i) of this section.

(b) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the Connecticut General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits, the Administrator shall give adequate notice to the individual that a hearing will be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks. The notice to the individual shall include:

(1) the time and date of such hearing;

(2) notification as to the telephone hearing process if scheduled to be conducted by telephone;

(3) information necessary for the claimant to submit evidence or testimony for use at the hearing, if applicable;

(4) notification that such hearing will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies;

(6) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual, and that if the individual's receipt of such sum of benefits was not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another, the individual shall also have the following issues considered at the same hearing:

(A) the exact amount of benefits overpaid to the individual;

(B) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4; and

(C) if no waiver is made pursuant to subparagraph (B) of this subdivision, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits;

(7) notice to the individual that if the individual fails to appear at such hearing, the Administrator will proceed to adjudicate all issues identified in this section and make a determination with respect to those issues on the basis of the record available to the Administrator, by offset from the individual's weekly unemployment benefits, pursuant to subsection (c) of this section; and

(8) notice that the Administrator's determination or any portion thereof may be appealed to the Employment Security Appeals Division.

The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

(5) identification of the question or questions of eligibility to be addressed at such hearing;

(c) Where the individual is determined to be ineligible for benefits as the result of a hearing conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies or upon review of the available record, the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;

(5) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies; and

(6) the individual's statutory appeal rights.

However where, as the result of a hearing conducted pursuant to subsection (b) of this section, the Administrator determines that an individual has been overpaid benefits but that additional evidence is necessary to make a proper determination as to whether such overpayment should be waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies, and that such evidence could be obtained by the individual within a reasonable period of time, the Administrator may issue a determination with respect to subdivisions (1), (2) and (3) of this subsection immediately, and issue a subsequent determination with respect to subdivisions (4) and (5) of this subsection after the individual has been afforded a reasonable opportunity to present any additional evidence to support the individual's request for waiver of the overpayment. In each determination, the Administrator shall afford the individual statutory appeal rights.

(d) Where the Administrator detects that an individual has been overpaid benefits as a result of a clerical or computational error in the processing of any weekly claim for benefits, the Administrator shall notify the individual that the individual has been charged with an overpayment of such benefits, the amount of the overpayment and that the individual has a right to a hearing to be held by the Administrator to address:

(1) whether or not the individual was overpaid benefits and the reasons therefor;

(2) the exact amount of benefits overpaid to the individual;

(3) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to section 31-273-4 of the Regulations of Connecticut State Agencies; and

(4) if no waiver is made pursuant to subdivision (3) of this subsection, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits, pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies .

In addition, the Administrator shall notify the individual that if the individual does not exercise the individual's right to such hearing within fourteen days of the date such notification was mailed, or if the individual waives in writing the individual's right to such hearing the Administrator will issue a determination with respect to these issues on the basis of the record available to the Administrator, which may be appealed to the Employment Security Appeals Division. Where an individual exercises such individual's right to such hearing, the Administrator shall issue a formal notice of hearing containing the provisions

outlined in subsection (b) of this section. The hearing held by the Administrator shall be conducted in accordance with the provisions in Section 31-273-8 of the Regulations of Connecticut State Agencies. Where the Administrator concludes during the course of such hearing that an overpayment does not exist, those issues relating to overpayment in subdivisions (2), (3), and (4) of this subsection will not be addressed in the hearing.

(e) Where an overpayment is found to exist as a result of the hearing or review of the available record referred to in subsection (d) of this section, the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies ;

(5) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies ; and

(6) the individual's statutory appeal rights.

(f) Where the Administrator determines that an individual has been overpaid benefits as the result of a decision by an Appeals Referee, the Board of Review or any state or federal court which reverses a prior decision and which has become final, or as the result of a redetermination of the individual's weekly benefit amount which has become final, the Administrator shall notify the individual that such individual has been charged with an overpayment of such benefits and that the individual has the right to a hearing to be held by the Administrator which will consider the following issues only:

(1) determination of the exact amount of benefits overpaid to the individual as a result of such decision;

(2) whether repayment or recoupment of such sum would defeat the purpose of the benefits or be against equity and good conscience and should be waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies ;

(3) if no waiver is made pursuant to subdivision (2) of this subsection, whether such overpaid benefits shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies. In addition, the Administrator shall notify the individual that if such individual does not exercise the individual's right to such hearing within fourteen days of the date such notification was mailed, or if the individual waives in writing such individual's right to such hearing, the Administrator will issue a determination with respect to the issues identified in subdivisions (1), (2), and (3) of this subsection on the basis of the record available to the Administrator, which may be appealed to the Employment Security Appeals Division.

(g) Where an individual exercises such individual's right to a hearing, pursuant to subsection (f) of this section, the Administrator shall issue a formal notice of hearing which

includes:

(1) the time and date of such hearing;

(2) notification as to the telephone hearing process if scheduled to be conducted by telephone;

(3) information necessary for the claimant to submit evidence or testimony for use at the hearing, if applicable;

(4) notification that such hearing will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies;

(5) identification of the issues to be addressed at such hearing, as described in subsection (f) of this section; and

(6) notice to the individual that if the individual fails to appear at such hearing, the Administrator will proceed to adjudicate all issues identified in this section and make a determination with respect to those issues on the basis of the record available to the Administrator.

The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies .

(h) Following any hearing or review of the available record by the Administrator pursuant to subsection (g) of this section, the Administrator shall issue a determination to the individual which contains the following information:

(1) the exact amount of benefits overpaid to the individual and the weeks for which the individual was overpaid;

(2) whether such overpayment has been waived, pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies;

(3) if not waived, the manner in which such sum shall be recouped by offset from the individual's weekly unemployment benefits pursuant to Section 31-273-3 of the Regulations of Connecticut State Agencies ; and

(4) where no waiver has been made, the individual's statutory appeal rights.

(i) The requirement that error be discovered and brought to the attention of the individual within one year of the date of receipt of benefits, imposed by subsection (a) of this section shall not apply to any overpayment resulting from a decision which was appealed and did not become final within such time limitations. In such cases, overpayment resulting from such error must be discovered and brought to the attention of the individual within one year from the date upon which the controlling decision became final.

(Effective March 29, 1988; Amended July 1, 1996; Amended May 12, 2014)

Sec. 31-273-3. Recovery of non-fraud overpayments

(a) Except as provided in subsections (b) and (c) of this section, where the Administrator determines that any sum of benefits which was overpaid to an individual for reasons other than fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another should not be waived pursuant to Section 31-273-4 of the Regulations of Connecticut State Agencies, and such decision has become

final, such overpayment shall be recouped by offset from any unemployment benefits subsequently payable to the individual in an amount equal to fifty percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

(b) Notwithstanding the provisions of subsection (a) of this section, during any weeks in which the Administrator has established that an "extended benefit period," as defined in Section 31-232b (a)(1) of the Connecticut General Statutes exists, the Administrator shall offset any overpayment to an individual which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to fifty percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

(c) Notwithstanding the provisions of subsection (a) of this section, during any week in which an individual's weekly benefit amount, prior to offset for any other purpose, is less than one hundred dollars, the Administrator shall offset any overpayment which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to twenty-five percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

(d) Any direct repayment by an individual of a portion of an overpayment under this section shall not preclude the Administrator from seeking the remaining portion of the overpayment as otherwise specified in this section.

(e) Whenever the Administrator determines that an individual has been overpaid benefits under this section because, as the result of a reduction in the individual's weekly benefit rate pursuant to Section 31-231a or 31-227(g) of the Connecticut General Statutes, the individual has already received a sum equal to or in excess of the individual's maximum limitation on total benefits, pursuant to Section 31-231b of the Connecticut General Statutes, the Administrator shall afford the individual the opportunity to:

(1) waive the offset provisions of subsection (a), or (b) or (c) of this section, if applicable;

(2) offset all benefits determined to be overpaid by fifty percent against the individual's overpayment; and

(3) Notwithstanding the provisions of subsection (a) of this section, during any week in which an individual's weekly benefit amount, prior to offset for any other purpose, is less than one hundred dollars, the Administrator shall offset any overpayment which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by himself or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to twenty-five percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

Any portion of the individual's overpayment which is not offset in accordance with the provisions of this subsection shall be recouped by the Administrator from any unemployment benefits payable to the individual in any subsequent benefit year in

accordance with the provisions of subsection (a), or (b) or (c) of this section, if applicable.

(f) Except as provided in subsection (e) of this section, whenever the Administrator determines that an individual has been overpaid benefits under this section because, as the result of an administrative determination or appellate decision reversing or modifying a prior award of benefits, the individual has already received a sum equal to or in excess of the individual's maximum limitation on total benefits pursuant to Section 31-231b of the Connecticut General Statutes, the Administrator shall afford the individual the opportunity to:

(1) waive the offset provision of subsection (a), or (b) or (c) of this section, if applicable;

(2) offset all benefits determined to be overpaid by fifty percent against the individual's overpayment; and

(3) Notwithstanding the provisions of subsection (a) of this section, during any week in which an individual's weekly benefit amount, prior to offset for any other purpose, is less than one hundred dollars, the Administrator shall offset any overpayment which is not due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another from any unemployment benefits subsequently payable to the individual in an amount equal to twenty-five percent of the individual's weekly benefit entitlement, rounded to the next lower whole dollar where such amount is not a whole dollar.

Any portion of the individual's overpayment which is not offset in accordance with the provisions of this subsection shall be recouped by the Administrator from any unemployment benefits payable to the individual in any subsequent benefit year in accordance with the provisions of subsection (a), or (b) or (c) of this section, if applicable.

(g) Where the offset of a determination of overpayment which was both made and became final on or after October 1, 1995 is insufficient to recoup the full amount of the overpayment, the Administrator shall establish a repayment schedule for the remaining amount. At the discretion of the Administrator, the repayment schedule may be modified or suspended as conditions warrant.

(h) If the individual fails to repay according to the repayment schedule established pursuant to subsection (g) of this section, the Administrator may make a finding of noncompliance. For purposes of this section, a "finding of noncompliance" means that, in the opinion of the Administrator, the individual is failing to make reasonable and acceptable efforts to adhere to the repayment schedule. In making a finding of noncompliance, the Administrator will specify the reasons for the determination and may consider any mitigating circumstances offered by the individual relating to the individual's ability to pay.

(i) Where the Administrator makes a finding of noncompliance as specified in subsection (h) of this section, the administrator may recover the overpayment through a wage execution against the individual's earnings and may request the Commissioner of Administrative Services to seek reimbursement for such amount pursuant to section 12-742 of the Connecticut General Statutes.

(j) Any finding of noncompliance made under this section may be enforced by a wage execution in the same manner as a judgment rendered in the superior court.

(k) Upon receipt of a repayment schedule established pursuant to subsection (g) of this section, or at any time during which an individual is subject to the terms of said repayment schedule, the individual may petition the Administrator for a modification or suspension of the repayment schedule. Such petition may be made orally or in writing and shall state the mitigating circumstances relating to the individual's ability to pay upon which the modification or suspension is requested.

(*l*) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in the Administrator's opinion, is uncollectible.

(Effective March 29, 1988; Amended July 1, 1996; Amended May 12, 2014)

Sec. 31-273-4. Waiver

(a) The Administrator shall determine that repayment or recoupment of any benefits found to be overpaid pursuant to Section 31-273-2 of the Regulations of Connecticut State Agencies would defeat the purpose of the benefits or would be against equity and good conscience and shall be waived only if the individual did not receive such benefits by reason of fraud, wilful misrepresentation or wilful nondisclosure by the individual or through the agency of another of a material fact, and one of the following conditions exists:

(1) it has been established by evidence or testimony, presented orally or in writing, that the individual's prospects for securing full-time employment are severely limited as a result of physical or mental disability, poor health or any other circumstances which would be detrimental to the individual's employability; or

(2) the benefits were overpaid to the individual as a result of retrospective application of a legislative change; or

(3) the benefits were overpaid as a direct result of gross administrative error; or

(4) the benefits were overpaid as the result of a decision by an Appeals Referee, the Employment Security Board of Review or any court of law reversing a prior decision, and adequate notice was not given to the individual that the individual would be required to repay benefits in the event of any reversal upon appeal; or

(5) it has been established by evidence or testimony, presented in person or in writing, that the individual substantially, detrimentally and irreversibly changed such individual's position in reliance upon the receipt of unemployment compensation by foregoing receipt of any public welfare benefits for which the individual would have been entitled but for the receipt of such unemployment compensation; or

(6) the individual—

(A) has been overpaid benefits in an amount equal to or greater than two times the individual's weekly benefit amount at the time the overpayment was made; and

(B) the individual's annualized family income, as determined under subsection (c) of this section, does not exceed one hundred and fifty percent of the poverty level, most recently published in the Federal Register by the United States Department of Commerce, Census Bureau, which corresponds to the size of the individual's family unit; or

(7) the individual is deceased ; or

(8) the benefits were overpaid as a direct result of an employer's failure to respond timely or adequately to a request of the Administrator for information relating to the individual's claim for unemployment compensation benefits in a manner prescribed by the Administrator.

(b) For the purposes of this section, "gross administrative error" may be found only where it is clear that a reasonable examiner, adjudicator or trier of fact in the same circumstances and presented with the same facts would not have made the same determination or taken the same action, or the Employment Security Division has failed to discharge its responsibilities so as to deprive the individual of substantial due process of law. Reversal or modification of any determination upon appeal shall not, by itself, constitute grounds for finding gross administrative error.

Gross administrative error by the Administrator may be found only where the individual was not aware and reasonably would not have been aware of such error, so that reliance could not justifiably have been placed upon a determination resulting from such error.

Gross administrative error by the Employment Security Appeals Division may be found only upon a specific finding by the Employment Security Board of Review that an individual was overpaid benefits as a direct result of a decision by the Appeals Division which constitutes gross administrative error within the meaning of this subsection. The Employment Security Board of Review may determine whether an overpayment directly resulted from gross administrative error by the Appeals Division either:

(1) upon appeal of the Referee's decision by any party to the Board of Review; or

(2) upon direct certification of the question of gross administrative error to the Board of Review by the Administrator, or an Appeals Referee in any subsequent proceeding.

(c) In order to determine an individual's "annualized family income" pursuant to subparagraph (B) of subdivision (6) of subsection (a) of this section, the Administrator shall:

(1) determine the total gross income of the individual and the individual's spouse, including cash contributions of any other family member to the individual's household, during the six months prior to the hearing held under Section 31-273-2 to determine whether the individual's overpayment should be waived, excluding any unemployment compensation which has been determined to be overpaid; and

(2) multiply such total income by two; and

(3) deduct any extraordinary medical expenses for which the individual is responsible but which are not covered by a health insurance plan.

(d) In order to determine whether an overpayment of benefits shall be waived pursuant to subdivision (6) of subsection (a) of this section, the Administrator may require the individual to present any financial records, pay stubs, federal income tax returns, or other data deemed necessary for such determination. The Administrator may require the individual to provide such individual's spouse's social security number for the purpose of verifying the spouse's income.

(e) The Administrator shall publish annually tables which set forth income levels equal

to one hundred and fifty percent of the poverty level, most recently published by the United States Department of Commerce, Census Bureau, in relation to family size. Such tables shall be utilized in making all determinations pursuant to subdivision (6) of subsection (a) of this section. Copies of such tables may be obtained by any individual, upon request, at any office of the Connecticut Labor Department, Employment Security Division.

(Effective March 29, 1988; Amended May 12, 2013)

Sec. 31-273-5. Fraud overpayments: Notice, hearing and determination

(a) Where the Administrator determines that any individual has, by reason of fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another, received as benefits of any dollar amount while any condition imposed by Chapter 567 of the Connecticut General Statutes was not fulfilled, or has received any amount more than was due him, such individual shall be charged with an overpayment of a sum equal to the amount so overpaid to the individual and shall be liable to repay to the Administrator such sum as well as any other penalties assessed by the Administrator in accordance with the provisions of sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies.

(b) If any individual charged by the Administrator with an overpayment, pursuant to subsection (a), does not make repayment in full of the sum overpaid, the Administrator shall recoup such sum as specified in Section 31-273-7 of the Regulations of Connecticut State Agencies.

(c) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in the Administrator's opinion, is uncollectible.

(d) Where the Administrator identifies a question of eligibility pursuant to Chapter 567 of the Connecticut General Statutes with respect to one or more weeks for which an individual was previously paid any sum of benefits or detects that an individual received more benefits than that to which such individual was entitled, and reasonably believes on the basis of available evidence that such receipt of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another, the Administrator shall notify the individual in writing of the identification of such question and that the individual has a right to a hearing to be held by the Administrator for the purpose of determining whether the individual was eligible for benefits for such week or weeks, and whether any benefits were received fraudulently. The notice shall inform the individual that if such individual does not exercise such right by notifying the Administrator within fourteen days of the date the notice was mailed, a decision will be rendered on the basis of the record available to the Administrator which may be appealed to the Employment Security Appeals Division. In addition, such notice shall advise the individual that an adverse determination will result in the imposition of an administrative penalty pursuant to sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies and may result in recoupment methods conducted pursuant to

the provisions of Section 31-273-7 of the Regulations of Connecticut State Agencies.

If the individual exercises such individual's right to a hearing, the Administrator shall give the individual adequate notice that a hearing will be held. The notice shall include:

(1) the time and date of such hearing;

(2) notification as to the telephone hearing process if scheduled to be conducted by telephone;

(3) information necessary for the claimant to submit evidence or testimony for use at the hearing, if applicable;

(4) notification that the hearing will be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

(5) identification of the question or questions of eligibility to be addressed at such hearing;

(6) notice that a determination of ineligibility or non-entitlement for any week or weeks or part of any week or weeks will result in the charging of an overpayment to the individual;

(7) notice that if, following consideration of any question of eligibility or entitlement, there exists the possibility that the individual was overpaid benefits and the individual's receipt of such sum of benefits was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by such individual or through the agency of another, the individual shall also have the following issues considered at the same hearing:

(A) the exact amount of benefits overpaid to the individual, and

(B) whether or not the individual's receipt of such sum was due to fraud, wilful misrepresentation or wilful nondisclosure of a material fact by such individual or through the agency of another for the purpose of obtaining benefits;

(8) notice that a finding of fraud, wilful misrepresentation or wilful nondisclosure pursuant to subdivision (5)(A) of this subsection can result in the imposition of an additional administrative penalty in accordance with sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies; and

(9) notice to the individual that if the individual fails to appear at such hearing and a determination of ineligibility or non-entitlement is made, the Administrator will proceed to adjudicate the issues identified in subdivision (7) of this subsection and make a determination with respect to those issues on the basis of the record available to the Administrator. The hearing held by the Administrator shall be conducted in accordance with the provisions of Section 31-273-8 of the Regulations of Connecticut State Agencies.

(e) Where the individual is determined to be ineligible for benefits and overpaid as a result of fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another following a hearing described in subsection (d), the Administrator shall issue a determination which contains the following information:

(1) the reason the individual was ineligible for or not entitled to benefits;

(2) the week or weeks for which the individual was overpaid as the result of such ineligibility or non-entitlement;

(3) the total amount of the overpayment;

(4) an administrative determination that the individual was overpaid because the individual, by such individual's own act of commission or omission or through the agency of another knowingly committed fraud, misrepresented a material fact or failed to disclose a material fact for the purpose of obtaining benefits;

(5) notice that such overpaid sum shall be repaid in full directly to the Administrator, and that if such sum is not repaid in full, it shall be recouped pursuant to the provisions of Section 31-273-7 of the Regulations of Connecticut State Agencies;

(6) the administrative penalty to be imposed, pursuant to sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies; and

(7) the individual's statutory appeal rights.

(f) Where an individual is determined to be ineligible for benefits but overpaid benefits for reasons other than fraud, wilful misrepresentation or wilful nondisclosure by such individual or through the agency of another as the result of a hearing described in subsection (d) of this section, the Administrator shall notify the individual that the individual has the right to a hearing in accordance with the provisions of subsection (d) of Section 31-273-2 of the Regulations of Connecticut State Agencies, which may, at the individual's option, be conducted immediately or within five business days.

(Effective March 29, 1988; Amended July 1, 1996; Amended May 12, 2014)

Sec. 31-273-6. Administrative penalty for overpayments established prior to October 1, 2013

(a) Whenever the Administrator determines, prior to October 1, 2013, pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, that any individual has himself or herself or through the agency of another made a claim for benefits and knowingly made a false statement or representation or knowingly failed to disclose a material fact in order to obtain benefits or to increase the amount of benefits to which such individual may be entitled, such individual shall forfeit benefits for not less than one nor more than thirty-nine compensable weeks following determination of such offense or offenses, during which weeks the individual would otherwise have been eligible to receive benefits. For the purposes of Section 31-231b of the Connecticut General Statutes, such person shall be deemed to have received benefits for such forfeited weeks.

(b) Except as provided in subsections (d) and (e) of this section, the number of weeks of benefits to be forfeited shall be the lesser of:

(1) the number of weeks of benefits fraudulently claimed multiplied by one, up to a maximum of thirty-nine; or

(2) that number of weeks which corresponds to the total dollar amount fraudulently claimed on the Administrative Penalty Table in subsection (c) of this section.

(c) The Administrator shall apply the following Administrative Penalty Table in determining the number of penalty weeks to be forfeited, pursuant to subsection (b) of this section:

Dollars	Number of	Dollars	Number of

Overpaid	Weeks Forfeited	Overpaid	Weeks Forfeited
1 - 499	1	10,000 - 10,499	21
500 - 999	2	10,500 - 10,999	22
1,000 - 1,499	3	11,000 - 11,499	23
1,500 - 1,999	4	11,500 - 11,999	24
2,000 - 2,499	5	12,000 - 12,499	25
2,500 - 2,999	6	12,500 - 12,999	26
3,000 - 3,499	7	13,000 - 13,499	27
3,500 - 3,999	8	13,500 - 13,999	28
4,000 - 4,499	9	14,000 - 14,999	29
4,500 - 4,999	10	14,500 - 14,999	30
5,000 - 5,499	11	15,000 - 15,499	31
5,500 - 5,999	12	15,000 - 15,999	32
6,000 - 6,499	13	16,000 - 16,499	33
6,500 - 6,999	14	16,500 - 16,999	34
7,000 - 7,499	15	17,000 - 17,499	35
7,500 - 7,999	16	17,500 - 17,999	36
8,000 - 8,499	17	18,000 - 18,499	37
8,500 - 8,999	18	18,500 - 18,999	38
9,000 - 9,499	19	19,000 & over	39
9,500 - 9,999	20		

(d) Notwithstanding the provisions of subsection (b) of this section, where an individual increases or attempts to increase the dollar amount of a benefit check issued by the Administrator, the Administrator shall impose a penalty of two weeks of forfeited benefits for each check which the individual has increased or attempted to increase.

(e) Notwithstanding the provisions of subsection (b) of this section, where an individual's failure to report earnings for a week or weeks in which the individual received benefits has resulted in an administrative determination pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, and the individual has also been overpaid for a subsequent week or weeks as a result of a retroactive denial of benefits because such individual's separation from such unreported employment was for a disqualifying reason, the Administrator shall impose a penalty of two weeks of forfeited benefits in addition to any penalty imposed as a result of the earnings the individual failed to report, provided the Administrator finds that the individual knowingly failed to disclose such separation for the purpose of obtaining benefits.

(f) Where the Administrator has found that an individual has committed an offense, as

defined in subsection (i) of this section, and

(1) that the individual committed one prior offense, the Administrator shall impose an extra penalty of five forfeited weeks of benefits in addition to any other penalty imposed pursuant to this section; or

(2) that the individual has committed two prior offenses, the Administrator shall impose an extra penalty of ten forfeited weeks of benefits, in addition to any other penalty imposed pursuant to this section; or

(3) that the individual has committed three prior offenses, the Administrator shall impose a maximum penalty of thirty-nine forfeited weeks of benefits.

(g) The Administrator shall not consider any restitution by the individual of benefits overpaid in determining the number of weeks of benefits to be forfeited pursuant to this section.

(h) Any penalty imposed pursuant to this section shall remain in full force and effect until such time as said penalty has been satisfied in full, as determined by the Administrator.

(i) For the purposes of this section, an offense is a single week or a series of weeks within a given time period with respect to which the Administrator has established that an individual has made a claim for benefits and has, himself or herself or through the agency of another, made a false statement or representation or has knowingly failed to disclose a material fact for the purpose of obtaining benefits or increasing the amount of benefits to which such individual may be entitled.

(Effective March 29, 1988; Amended July 1, 1996; Amended June 12, 2006; Amended May 12, 2014)

Sec. 31-273-6a. Administrative penalty for overpayments established on or after October 1, 2013

(a) For any determination of an overpayment made on or after October 1, 2013, whenever the Administrator determines, pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, that any individual has, himself or herself or through the agency of another, made a claim for benefits and knowingly made a false statement or representation or knowingly failed to disclose a material fact in order to obtain benefits or to increase the amount of benefits to which the individual may be entitled, such individual shall be subject to a penalty of fifty (50) percent of the amount of overpayment for the first offense and a penalty of one hundred (100) percent of the amount of overpayment if any subsequent offense, regardless of whether the overpayment was established prior to October 1, 2013 or on or subsequent to October 1, 2013. This penalty shall be in addition to the liability to repay the full amount of overpayment and shall not be confined to a single benefit year. The penalty amounts computed in this subsection shall be rounded to the nearest dollar with fractions of a dollar of exactly fifty cents rounded upward.

(b) The Administrator shall not consider any restitution by the individual of benefits overpaid in determining the amount of the penalty to be imposed pursuant to this section.

(c) Any penalty imposed pursuant to this section shall remain in full force and effect

until such time as said penalty has been satisfied in full, as determined by the Administrator.

(d) For the purposes of this section, an offense is a single week or a series of weeks within a given time period with respect to which the Administrator has established that an individual has made a claim for benefits and has, himself or herself or through the agency of another, made a false statement or representation or has knowingly failed to disclose a material fact for the purpose of obtaining benefits or increasing the amount of benefits to which such individual may be entitled.

(Effective May 12, 2014)

Sec. 31-273-7. Fraud overpayment recovery

(a) Where the Administrator determines that an individual has been overpaid as the result of fraud, wilful misrepresentation or wilful nondisclosure by himself or herself or through the agency of another of a material fact, pursuant to Section 31-273-5(e) of the Regulations of Connecticut State Agencies, any resultant determination that the individual is liable for repayment, recoupment by one hundred percent offset from benefits, or any administrative penalty imposed pursuant to sections 31-273-6 and 31-273-6a of the Regulations of Connecticut State Agencies shall be effective upon issuance.

(b) At any time where the Administrator makes a determination of overpayment pursuant to subsection (a) of this section, the Administrator may request the Commissioner of Administrative Services to intercept the individual's State Income Tax refund, if any, pursuant to section 12-742 of the Connecticut General Statutes.

(c) (1) Notwithstanding the provisions of subsections (a) and (b) of this section, where the offset of an overpayment made on or after October 1, 1995 is insufficient to recoup the full amount of the overpayment, the Administrator shall establish a repayment schedule for the remaining amount. At the discretion of the Administrator, the repayment schedule may be modified or suspended as conditions warrant.

(2) For any determination of an overpayment made on or after July 1, 2005, the repayment schedule shall impose interest at a rate of one percent of the amount overpaid per month.

(d) If the individual fails to repay according to the repayment schedule established pursuant to subsection (c) of this section and the overpayment has become final, the Administrator may make a finding of noncompliance. For purposes of this section, "a finding of noncompliance" means that, in the opinion of the Administrator, the claimant is failing to make reasonable and acceptable efforts to adhere to the repayment schedule. In making a finding of noncompliance, the Administrator shall specify the reasons for the determination and may consider any mitigating circumstances offered by the individual relating to such individual's ability to pay.

(e) Where the Administrator makes a finding of noncompliance as specified in subsection (d) of this section, the Administrator may recover (1) for any overpayment established prior to October 1, 2013, the overpayment, plus interest and, (2) for overpayments established on or after October 1, 2013, the overpayment, plus interest, and any administrative penalty

assessed pursuant to section 31-273-6a of the Regulations of Connecticut State Agencies, through a wage execution against the individual's earnings, or an execution against the individual's assets, or through any other enforcement permitted by law, including the submission of the outstanding balance to the Internal Revenue Service for the purpose of offsetting the claimant's federal tax refund pursuant section 31-273 of the Connecticut General Statutes and applicable federal laws.

(f) Upon receipt of a repayment schedule established pursuant to subsection (c) of this section, or at any time during which an individual is subject to the terms of said repayment schedule, the individual may petition the Administrator for a modification or suspension of the repayment schedule. Such petition may be made orally or in writing and shall state the mitigating circumstances relating to the individual's ability to pay upon which the modification or suspension is requested.

(g) The Administrator shall, eight years after the payment of any benefits described in this section, cancel any claim for such repayment or recoupment which, in the Administrator's opinion, is uncollectible.

(h) If the Administrator's finding that the overpayment resulted from fraud, wilful misrepresentation or wilful nondisclosure of a material fact by the individual or through the agency of another is reversed or modified upon appeal by an Appeals Referee, the Employment Security Board of Review or any court of law, the Administrator shall, upon issuance of such decision, relieve the individual of such liability or penalty to the extent provided by such decision. Such relief shall include refund of any benefits, plus interest, recouped in reliance upon the prior decision.

(Effective March 29, 1988; Amended July 1, 1996; Amended June 12, 2006; Amended May 12, 2014)

Sec. 31-273-8. Hearing procedure

(a) In any hearing conducted pursuant to Section 31-273-2 or Section 31-273-5, each party shall be afforded, subject to the Administrator's control:

(1) The right to be represented by any person, including an attorney;

(2) The right to inspect or copy any documents in the administrator's file which are material to the subject matter of the hearing and not exempt from disclosure by law;

(3) The right to present evidence, documents and witnesses; and

(4) The right to cross-examine witnesses and parties, so long as the administrator deems such cross-examination to be material and relevant.

(b) The Administrator shall conduct and control any hearing held pursuant to Section 31-273-2 or Section 31-273-5 informally and shall not be bound by the ordinary common law or statutory rules of evidence or procedure. The Administrator shall make inquiry in such manner through oral testimony and written and printed records and take any action consistent with the impartial discharge of his duties, as is best calculated to ascertain the relevant facts and the substantial rights of the parties, furnish a fair and expeditious hearing, and render a proper and complete determination. The Administrator may at any time

examine or cross-examine any party or witness, and require such evidence as he determines to be necessary for a proper and complete determination. The Administrator shall determine the order for presentation of evidence and he may exclude testimony and evidence which he determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper. The Administrator shall, as he deems necessary in the interests of justice, advise any party as to his rights, aid him in examining and cross-examining witnesses, help him in presenting evidence and otherwise render such assistance as is compatible with the impartial discharge of the Administrator's duties.

(c) In any case involving an individual claiming benefits on an interstate basis, the Administrator shall attempt to conduct any hearing pursuant to Section 31-273-2 or Section 31-273-5 by telephone. To the extent practicable, such hearing shall be conducted in accordance with the procedures set forth in subsections (a), (b), and (c) of this section. Where a hearing by telephone is not feasible, the Administrator shall make written inquiry, elicit written testimony and printed evidence and take any action consistent with the impartial discharge of his duties, as is best calculated to ascertain the relevant facts and substantive rights of the parties, furnish a fair and expeditious examination of the relevant issues, and render a proper and complete decision.

(Effective March 29, 1988; Amended July 1, 1996)

Sec. 31-273-9. Employer fraud: contested case hearing

(a) If, after investigation, the Administrator determines that there is probable cause to believe that a person, firm or corporation has wilfully failed to declare payment of wages in a payroll record, pursuant to section 31-273(d) of the Connecticut General Statutes, the Administrator shall provide an opportunity for hearing.

(b) (1) If the person, firm or corporation requests a hearing, it shall be conducted pursuant to the rules of procedure for hearings in contested cases to be conducted by the Labor Commissioner as provided in Sections 31-1-1 through 31-1-9, inclusive, of the Regulations of Connecticut State Agencies.

(2) Notice of the time, place, reason for such hearing and right of representation shall be provided to the person, firm or corporation requesting the hearing.

(c) (1) After the hearing, or after opportunity for hearing has been provided and no such hearing has been requested, the Administrator shall issue his final decision. Where, in his final decision, the Administrator determines that such nondeclaration occurred and was wilful, he shall fix the payments and penalties in accordance with the provisions of Section 31-273(e) of the Connecticut General Statutes.

(2) The Administrator may impose a penalty of ten(10) percent of the total contributions past due to the Administrator, as determined pursuant to Section 31-270. Such penalty shall be in addition to any other applicable penalty and interest under Section 31-266. In addition, the Administrator may require the person, firm or corporation to make contributions at the maximum rate provided in Section 31-225a for a period of one year following the determination by the Administrator concerning the wilful nondeclaration. If the person, firm

or corporation is paying or should have been paying, the maximum rate at the time of the determination, the Administrator may require that such maximum rate continue for a period of three years following the determination.

(Adopted effective July 1, 1996)

Agency

Workers' Compensation Commission

Subject

Preliminary Acts in Preparation for Work and Employee's Place of Abode

Inclusive Sections

§§ 31-275-1—31-275-2

CONTENTS

Preliminary Acts in Preparation for Work and Employee's Place of Abode

Sec. 31-275-1. Definitions

As used in subdivision (1) of section 31-275 of the general statutes:

(1) "A Preliminary Act" and "Acts In Preparation For Work" mean acts performed prior to the start of the employee's work day, and include, but are not limited to, the following acts, except when undertaken at the express direction or request of the employer:

(a) Personal activities;

(b) Household chores;

(c) Personal grooming or hygiene, such as showering, dressing, brushing teeth, ironing clothes, drying and combing hair, applying makeup, and shaving;

(d) Preparing meals, including a lunch or snack to take to work;

(e) Removal of obstacles from one's walkway, driveway or yard, including but not limited to snow, ice, trash cans, recycling containers, or stones, in order to facilitate entry from one's residence onto a public thoroughfare, unless said removal is necessary to accommodate work required by the employer; and

(f) any other acts necessary in order to prepare oneself for work.

(2) "Employee's place of abode" includes, but is not limited to:

(a) House, condominium, or apartment;

(b) Inside of residential structures;

(c) Garages;

(d) Common hallways;

(e) Stairways;

(f) Driveways;

(g) Walkways, or

(h) Yards.

(Adopted effective October 18, 1996)

Sec. 31-275-2. Definitions applicable to Department of Correction employees as required by section 31-275(1)(G) of the Connecticut General Statutes

As used in subparagraph (A)(ii) of subdivision (1) of section 31-275 of the Connecticut General Statutes:

(a) "Departure from place of abode directly to duty" means the direct trip to the employee's place of employment that occurs following the receipt of a direct order informing an employee that he or she is required to report directly to work, regardless of whether the employee is physically at his or her place of residence at the time the communication is received. For employees who receive an order to work a previously unscheduled shift, an employee's trip directly to duty includes any detours immediately essential to the employee's ability to report.

(b) "Direct order" means any communication that informs an employee that he or she must report to work under circumstances in which nonessential employees are excused from working.

(c) "Return directly to place of abode after duty" means the direct trip to the employee's abode following his or her work shift, including any immediately essential detour necessitated by a call to work.

(d) "Two or more mandatory overtime work shifts" means a situation in which an employee is required to work a regular shift and an additional full shift on consecutive days (approximately a 16-hour shift each day), or situations in which an employee is required to work a regular shift and two consecutive full overtime shifts (approximately one 24-hour shift).

(Adopted effective December 6, 2007)

Agency
Workers' Compensation Commission

Subject
Availability of Workmen's Compensation

Inclusive Sections
§§ 31-279(b)-1—31-279(b)-5

CONTENTS

Availability of Workmen's Compensation

Sec. 31-279(b)-1. Statutory notice to employees

The notice to employees required by Public Act 75-223 shall be substantially in the following form:

STATE OF CONNECTICUT

NOTICE TO EMPLOYEES

WORKMEN'S COMPENSATION ACT

Chapter 568 of the Connecticut General Statutes requires that your employer, ... provide benefits to you or your dependents in case of accidental injury in the course of employment or occupational disease.

In all such cases you must make a prompt report to the plant medical facility or the person designated by the employer to receive such information.

The insurance carrier for this employer is:

Name . . . . . .
Address. . . . . .
Telephone . . . . . .
(If authorized self-insurer, so indicate).

The Compensation Commissioner in whose jurisdiction this place of employment is located is:

Name . . . . . .
Address. . . . . .
Telephone . . . . . .

Any questions as to your rights under the law or the obligations of the employer or carrier should be addressed to the above office which will try to assist you, or assign your case for hearing, if necessary.

Board of Compensation Commissioners
State of Connecticut

This notice must be posted in a conspicuous place in each place of employment.

Date Posted . . . . . .

P.A. 75-223

(Effective May 24, 1976)

Sec. 31-279(b)-2. Type size on notice

Such notice shall be printed in type not less than ten point bold face.

(Effective May 24, 1976)

Sec. 31-279(b)-3. Posting requirement

Each place of employment of persons subject to the provisions of chapter 568 of the general statutes shall post such a notice in a place readily accessible to all employees.

(Effective May 24, 1976)

Sec. 31-279(b)-4. Policy revisions

The information in such notice shall be kept current by each employer to whom a certificate of solvency has been issued, and shall be revised by each insured employer each time a new policy of workmen's compensation insurance is issued to it.

(Effective May 24, 1976)

Sec. 31-279(b)-5. Effective date

These regulations shall take effect upon the joint approval of the Attorney General and the Legislative Regulations Review Committee.

(Effective May 24, 1976)

Agency

Workers' Compensation Commission

Subject

Assignment and Postponement of Hearings and the Authority of Claims Personnel

Inclusive Sections

§§ 31-279-1—31-279-10

CONTENTS

Assignment and Postponement of Hearings and the Authority of Claims Personnel

Sec. 31-279-1. Claims administration

(a) As a condition of procuring a certificate of self-insurance or a license to write workers' compensation insurance, each self-insurer or carrier shall maintain a staff of claims adjusters or attorneys of sufficient size to attend hearings in the various districts at times convenient to the injured employee and the compensation commissioner.

(b) The employer, and his service company where applicable, shall complete a certification of servicing for self-insurers form and file it with the chairman or his designee.

(c) The chairman or his designee shall be notified immediately of any change of third party administrator.

(d) The claims administrator shall notify the chairman or his designee in writing within fourteen (14) days of a self-insured employer's failure to provide adequate funding for timely payment of benefits.

(Effective November 30, 1971; Amended October 1, 1996)

Sec. 31-279-2. Attendance at hearings

Punctual appearance by an authorized representative at every conference or hearing assigned by the commissioner is required, unless such attendance is excused by the commissioner prior to the conference or hearing.

(Effective November 30, 1971)

Sec. 31-279-3. Request for continuance

Except in cases of unforeseeable emergency, requests for continuances shall be made in time to provide adequate notice to all parties, and should normally not be made ex parte, but only after communication with other parties to the claim.

(Effective November 30, 1971)

Sec. 31-279-4. Basis for decision

Unless prior approval for cause is secured from the commissioner, a claim assigned for a formal hearing shall be decided on the basis of the evidence adduced by the parties at the time and place designated. No party can assume the granting of a continuance to produce witnesses at a later date, or for any other reason not regularly recognized in a judicial proceeding.

(Effective November 30, 1971)

Sec. 31-279-5. Voluntary agreements and stipulations

Representatives of carriers and self-insurers who appear at informal and formal hearings shall be authorized by their principals to enter into voluntary agreements and stipulations, at least up to a minimum amount, and an agent with full authority for each principal shall

be reasonably accessible by telephone at the time of hearing.

(Effective November 30, 1971)

Sec. 31-279-6. Assignment of hearings

An assignment should normally be requested of a compensation commissioner only when prior consultations between the parties have failed to achieve an agreement which can be reduced to writing. It shall therefore be considered an impropriety for a hearing to be requested by an employer or carrier with no prior discussions between the claimant and the respondent.

(Effective November 30, 1971)

List of Approved Physicians and Fees for Professional Services

Sec. 31-279-7. Repealed

Repealed November 23, 1993.

Sec. 31-279-8. Fees for professional services

Until such time as the board of compensation commissioners shall establish fees for professional services as authorized by section 31-279, the pecuniary liability of the employer for medical and surgical services rendered injured employees shall continue to be measured by the standard set out in section 31-294; namely a limitation to such charges as prevail in the same community or similar communities for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons.

(Effective July 9, 1973)

Sec. 31-279-9. Obligations of attending physician

Persons who supply professional services to injured employees entitled to medical care by virtue of chapter 568 of the general statutes shall be presumed to agree to the following conditions:

(a) The employer or its insurance carrier will receive an early original report of injury, and such regular subsequent progress reports from the attending physician as may be reasonably required in each case.

(b) No fee will be charged by the attending physician for the completion of any of the forms approved by the board of compensation commissioners or for routine progress reports submitted to the employer or carrier. Where detailed reports are requested or indicated, requiring a significant expenditure of time by the attending physician, a reasonable additional charge for such time will be appropriate.

(c) It shall be the duty of the attending physician, without specific request, to keep the employer or insurance carrier advised of any significant development in the course of his treatment, such as the attainment of maximum medical improvement, a hospital, admission, a surgical procedure, a failure to accept indicated treatment or to keep scheduled

appointments, or an ability to return to gainful employment.

(d) Upon reasonable notice, an attending physician will make himself available as a witness in hearings before a compensation commissioner, for which appearance he will be entitled to be paid a reasonable fee by the party requesting his attendance, subject to the pertinent provisions of law.

(e) All charges for medical, surgical, hospital and nursing services, except those for expert testimony, shall be solely the responsibility of the employer or carrier, and no claim will be made against the injured employee for all or part of a fee.

(f) It will be considered professionally reprehensible for a physician to refuse to send out his patient's medical report to a party properly entitled because his medical bill for services rendered has not been paid up to that time.

(g) Violation of these regulations shall constitute sufficient cause for a removal from the approved list of physicians maintained by the board of compensation commissioners.

(Effective July 9, 1973)

Sec. 31-279-10. Medical care plans

(a) All medical care plans submitted pursuant to Section 31-279 of the Connecticut General Statutes by any employer or, on behalf of one or more employers, by any insurer, mutual employer association, self-insurance service organization or other sponsoring organization to arrange for the provision of medical and health care services, including medical and surgical aid or hospital and nursing service and medical rehabilitation services, shall include the following in addition to the information required by said section:

(1) The identity of any company or organization which will participate in the operation of the medical care plan, a description of such participation and, where applicable, the following:

(A) a certificate from the Secretary of the State and/or the Insurance Commissioner regarding the company or organization's good standing to do business in the State of Connecticut;

(B) a copy of the company or organization's balance sheet at the end of its most recently concluded fiscal year, along with the name and address of any public accounting firm or internal accountant which prepared or assisted in the preparation of such balance sheet;

(C) a list of the names, business addresses and official positions of members of the company or organization's board of directors or other policymaking body and of those executive officers who are responsible for the company or organization's activities with respect to the medical care plan;

(D) a list of the company or organization's principal owners;

(E) in the case of an out-of-state company or organization, a certificate that such company or organization is in good standing in its state of organization;

(F) the identity, address and current relationship of any related or predecessor company or organization; "related" for this purpose means that a substantial number of the board or policymaking body members, executive officers or principal owners of both companies are

the same; and

(G) in the case of a Connecticut or out-of-state company or organization, a report of the details of any suspension, sanction or other disciplinary action relating to such company or organization in this state or in any other state.

(2) A description of the general financial arrangements between the employer, insurer, mutual employer association, self-insurance service organization or other sponsoring organization and any company or organization participating in the operation of the medical care plan, and a description of the financial arrangements with the providers of health care and medical services, including any fee schedule(s) or formula(s) used to determine the fees of such providers. To the extent permitted by law, the information required in this subdivision shall be confidential and may be reviewed only by the Chairman of the Workers' Compensation Commission or his designee.

(3) A general description of the medical care plan, including the responsibilities of the following:

(A) the employer, insurer, mutual employer association, self-insurance service organization or other sponsoring organization;

(B) any company or organization identified in subdivision (1) of subsection (a);

(C) providers of health care and medical services; and

(D) employees covered under the plan.

(4) Provision that such plan applies only to illnesses or injuries incurred by employees covered under the plan subsequent to the effective date of the medical care plan.

(5) Provision that all medical and health care services that may be required within the service area identified by the plan shall be available at the offices of participating providers during regular or extended office hours, and through participating hospital emergency rooms for emergency cases which cannot be treated at the offices of participating providers during such regular or extended office hours. The numbers and locations of such participating providers, including hospital emergency rooms, shall be such that care may be provided immediately for emergency cases, that an initial evaluation and either appropriate care or referral to other plan providers may take place within twenty-four (24) hours for an injury or disease not previously treated which is not an emergency case, and that other necessary care will be provided as appropriate. With respect to hospital emergency rooms and other providers of emergency care, the plan shall indicate its minimum criteria for distance and/or travel time to such emergency care facilities from the employer's principal employment locations.

(6) A list of all employee and contract providers included within the plan; in the case of contract providers, their relationships with the plan shall be described in a written agreement, a copy of which shall be made available to the Chairman of the Workers' Compensation Commission at his request. Said list of providers shall be filed with the plan's application for approval, updated for changes at least quarterly and shall include:

(A) at least one occupational health clinic, auxiliary occupational health clinic or hospital that has a Board Eligible or Board Certified Occupational Health Physician.

(B) at least three providers (not in the same group or practice) or two providers (not in the same group or practice) with a minimum choice in total of five individual providers of each of the following types of medical and health care service:

(i) Cardiology;
(ii) Chiropractic Medicine,
(iii) Dentistry;
(iv) Dermatology;
(v) Family Practice;
(vi) Gastroenterology;
(vii) General Hospital Service;
(viii) General Surgery;
(ix) Internal Medicine;
(x) Neurology;
(xi) Neurological Surgery;
(xii) Obstetrics and Gynecology;
(xiii) Ophthalmology;
(xiv) Optometry;
(xv) Orthopedic Surgery;
(xvi) Otolaryngology;
(xvii) Physical Medicine and Rehabilitation;
(xviii) Physical Therapy;
(xvix) Plastic Surgery;
(xx) Podiatry;
(xxi) Psychiatry;
(xxii) Psychology;
(xxiii) Pulmonary Medicine;
(xxiv) Radiology;
(xxv) Thoracic Surgery;
(xxvi) Urology; and
(xxvii) service from such other providers of medical and health care service as determined by the plan to be necessary.

(7) A description of the selection criteria and removal procedures for providers of medical and health care services under the medical care plan. This provision shall not be construed to require a medical care plan to accept all providers who apply for participation and meet the selection criteria. To the extent permitted by law, the information required in this subdivision shall be confidential and may be reviewed only by the Chairman of the Workers' Compensation Commission or his designee.

(8) A written description of the plan's review and appeal procedures and standards for service utilization review and dispute resolution adopted pursuant to subsections (e) and (h) of this regulation.

(9) A copy of the information to be distributed to employees covered by the medical care

plan. This information shall be written in plain language and include the following:

(A) a description of the medical care and treatment services available from providers of medical and health care services listed in the plan;

(B) the manner in which the employee or his representatives may obtain medical and health care services, whether from plan providers or other providers;

(C) a description of the procedures by which an employee may question or dispute the level of benefits paid under the plan; and

(D) a detailed description of an employee's right to obtain medical care and treatment services from a provider of medical services who is not listed in the plan and the employee's financial and other obligations in the event the employee exercises this right.

(10) A statement by the employer that an eligible employee's participation in the medical care plan is not inconsistent with any collective bargaining agreement affecting such employee and that a copy of the applicable collective bargaining agreement will be made available to the Chairman on request.

(11) In the case of an insurer, mutual employer association, self-insurance service organization or other sponsoring organization, a statement that each employer whose employees are eligible to participate in the medical care plan has given written consent to such participation and such written consent is in the insurer's, association's or organization's possession and will be made available to the Chairman on request.

(12) Provision that a request made by an employee to be examined for a second opinion by a reputable practicing physician or surgeon not listed in the plan shall be considered reasonable and shall be paid for by the employer if such request is submitted to and approved by a Workers' Compensation Commissioner. For these purposes, a reputable practicing physician or surgeon shall be a physician or surgeon on the approved list of practicing physicians, surgeons, podiatrists and dentists established by regulation.

(b) The Chairman may approve plans which include employee or contract providers for some but not all of the types of medical and health care service required by subparagraph (B) of subdivision (6) of subsection (a) of this section so long as the following requirements are satisfied:

(1) the plan provides to the employees the name, address and telephone number of each contract and employee provider of the plan;

(2) for each type of medical and health care service not provided by employee or contract providers, the plan shall clearly indicate that such service is available from practitioners on the approved list of practicing physicians, surgeons, podiatrists and dentists established by regulation;

(3) the plan complies with all other requirements of this regulation except, in the case of practitioners on the approved list who are not employee or contract providers and who are not providing medical and health care services pursuant to an employee's election to obtain their services rather than the services of a plan provider, the service utilization review and dispute resolution provisions of subsection (e) shall not apply.

(c) Medical care plans submitted on behalf of employers having twenty-five (25) or more

employees shall include a labor-management safety committee for each such employer with representatives of labor at least equal in number to representatives of management, in compliance with regulations established by the workers' compensation commission in sections 31-40v-1 through 31-40v-11, unless such committee representation is inconsistent with a collective bargaining agreement.

(d) Medical care plans submitted on behalf of employers having fifty (50) or more employees shall include provision for plan providers to evaluate the capacity of injured employees of such employers to return to their most recent employment, with or without modification, or to another position with their employer. Such providers shall indicate any limitations on the ability of such employees to perform work related tasks.

(e) Each medical care plan shall include provision for both a service utilization review providing a method to evaluate the necessity and appropriateness of medical and health care services recommended by a provider, and a means of dispute resolution if payment for such medical and health care services is denied. Such service utilization review and dispute resolution shall include, at a minimum, the following review and appeal procedures:

(1) Initiation of a review by any one or more of the following parties: the employee, the provider, the employer, or the medical care plan itself, either directly or through a utilization review contractor. If a party other than the plan initiates the review, such party shall supply to the plan all information in its possession which is relevant to the review. The plan may also request such information as it deems necessary to conduct the review.

(2) Upon receipt of all proffered and requested information, the plan shall review such recommended treatment, utilizing written clinical criteria which have been established by the plan and periodically evaluated by appropriate providers of medical and health care services required under Chapter 568 of the Connecticut General Statutes.

(3) Not more than two (2) business days after receipt of all such information, the plan shall provide written notice to the provider and employee of its determination regarding the recommended treatment. Any written notice of a determination not to certify an admission, service, procedure or extension of stay shall include the reasons therefor and the name and telephone number of the person to contact with regard to an appeal. The provider and the employee shall also be provided with a copy of the written review and appeal procedures.

(4) The provider or the employee may, within fifteen (15) days of the written notice of determination, notify the plan of his or her intent to appeal a determination to deny payment for the recommended treatment.

(5) Upon such appeal, the plan shall provide, at the request of the employee or provider, a practitioner in a specialty relating to the employee's condition for the purpose of reviewing the plan's initial decision.

(6) Within fifteen (15) days of the request for such review and submission of any further documentation regarding the review, the reviewing practitioner shall submit his opinion regarding such recommended treatment to the medical director of the medical care plan who shall, within fifteen (15) days thereafter, render a written decision regarding such treatment.

(7) The employee, the provider or the employer may request a further review of the medical director's written decision; such request for further review shall be in writing and shall be submitted to the chief executive officer of the medical care plan within fifteen (15) days of the medical director's written decision. The party requesting further review shall have an opportunity for a hearing if such party requests it in writing and may, at such party's expense, produce whatever written support or oral testimony it wishes at any such hearing. Such hearing shall be conducted within fifteen (15) days of the written request therefor. The chief executive officer of the medical care plan shall make any final determination of such request for further review and may utilize an advisory committee to assist him in his determination. The chief executive officer shall issue a final written decision on the request for further review as soon as practical but, in any event, within thirty (30) days of the later of the date of submission of the written request for such review or the date of conclusion of the hearing requested as part of such review.

(8) In the case of an emergency condition, an employee or his representative shall be provided a minimum of twenty-four (24) hours following an admission, service or procedure to request certification and continuing treatment for that emergency condition before a utilization determination is made. If a determination is made not to provide such continuing treatment and the employee or his representative, the provider, or the employer requests a review of such determination, an expedited review shall be conducted by the medical director and a final decision rendered within two (2) days of the request for review.

(f) The necessity and appropriateness of medical and health care services recommended by providers of a medical care plan shall not be subject to review by a Workers' Compensation Commissioner until the plan's utilization review and dispute resolution review and appeal procedures, as described in subsection (e) have been exhausted. The decision of the chief executive officer of the plan relating to payment for such medical and health care services shall be subject to modification only upon showing that it was unreasonable, arbitrary or capricious.

(g) Each medical care plan shall include a quarterly report to the Chairman describing the result and number of appeals processed pursuant to the utilization review and dispute resolution review and appeal procedure set forth in subsection (e).

(h) The service utilization review and dispute resolution review and appeal procedures of subsection (e) shall, at a minimum, satisfy the following standards:

(1) Nurses and other health professionals other than physicians making utilization review recommendations and decisions shall hold current and valid licenses from a state licensing agency in the United States. Physicians making utilization review recommendations and decisions shall hold current and valid licenses in the State of Connecticut.

(2) Utilization review staff shall be generally available by toll-free telephone, at least forty hours per week during regular business hours.

(3) Each utilization review professional shall comply with all applicable state and federal laws to protect the confidentiality of individual medical records; summary and aggregate data shall not be considered confidential if it does not provide sufficient information to

allow identification of individual patients.

(4) All hospitals which are plan providers shall permit licensed utilization review professionals to conduct reviews on the premises. Each utilization review professional shall conduct its telephone and on-site information gathering reviews and hospital communications during the hospitals' reasonable and normal business hours, unless otherwise mutually agreed. Utilization review professionals shall identify themselves by name and by the name of their organization, if any, and, for on-site reviews, shall carry picture identification.

(5) The provider being reviewed shall provide to each utilization review professional, within a reasonable period of time, all relevant information necessary for the utilization review professional to certify the admission, procedure, treatment or length of stay. Failure of the provider to provide such documentation for review shall be grounds for a denial of certification in accordance with the policy of the utilization review organization or medical care plan.

(6) No utilization review professional may receive any financial incentive based on the number of denials of certification made by such professional.

(7) Any medical care plan which engages directly in utilization review and any utilization review contractor which performs utilization review on behalf of a medical care plan shall, according to law, be licensed by the Commissioner of Insurance as a utilization review company.

(i) Each medical care plan shall include a procedure for reporting information annually which provides, at a minimum, the following:

(1) data comparing employees treated under the medical care plan with employees treated outside the medical care plan, either because their illnesses or injuries were incurred before the effective date of such plan or because they exercised their right to select their own providers outside the plan, and such comparisons shall be made in terms of:

(A) type of care;

(B) volume of care;

(C) cost of care; and

(D) lost time days per employee.

(2) the number of employees who began their treatment under the plan but subsequently sought treatment outside the plan, such data to be expressed both in absolute numbers and as a percentage of the average employee plan population.

(j) Medical care plans may include, as a means of reducing service costs and utilization, the use of appropriate employees or designated contract providers as care managers or coordinators; such care managers or coordinators shall be licensed, as required by law and as provided in subsection (h) of this regulation and may have the following duties:

(1) To assist employees in obtaining initial treatment and subsequent referrals to providers of medical and health care services within the plan.

(2) To monitor the employee's progress under the treatment plan designed for that employee and make suggested changes or modifications in such treatment plan in the

interests of quality care and cost-effective delivery of such quality care.

(3) To communicate appropriately with the employer, insurer, self-insurance service organization or other claim administrator with respect to the employee's medical and health care treatment and recommended payment therefor.

(k) Nothing in this section is intended to prohibit an employer from providing more than one medical care plan for its employees, either directly or through an insurer, mutual employer association, self-insurance service organization or other sponsoring organization.

(Effective March 25, 1993; Amended December 2, 1997)

Agency

Workers' Compensation Commission

Subject

Approved Physicians and Other Practitioners

Inclusive Sections

§§ 31-280-1—31-280-3

CONTENTS

Approved Physicians and Other Practitioners

Sec. 31-280-1. List of approved physicians, surgeons, podiatrists, optometrists and dentists; standards for approval and removal from the list

(a) The list of approved practicing physicians, surgeons, podiatrists, optometrists and dentists from which an injured employee shall choose for examination and treatment under the provisions of Chapter 568, including but not limited to specialists, shall include all such practitioners who hold a current and valid license in their field in the State of Connecticut and who meet the following standards:

(1) continuation of a current and valid license in the State without revocation, suspension or limitation of such license in any way;

(2) possession of a valid federal Drug Enforcement Administration registration certificate in the case of practitioners whose license permits them to prescribe controlled drugs;

(3) compliance with the Medicare anti-kickback regulations promulgated by the United States Department of Health and Human Services;

(4) possession of admitting/active staff privileges at a general hospital accredited by the Joint Commission on Accreditation of Hospitals, if such privileges are required in order to provide satisfactory professional services within the practitioner's area of practice;

(5) compliance with the administrative obligations of attending physicians and other practitioners under Section 31-279-9 of the Regulations of Connecticut State Agencies;

(6) forbearance from requiring in advance a payment for providing an opinion or report, either written or oral, or for presenting testimony as a witness at a hearing or a deposition;

(7) completion of a course of training, approved by the Chairman, which course shall include a session describing the general responsibilities and obligations of physicians under the provisions of Connecticut General Statutes Chapter 568, along with training in the recognition and reporting of certain occupational and other diseases under sections 31-40a and 19a-110 of the Connecticut General Statutes; and

(8) forbearance from referring workers' compensation patients for physical therapy or diagnostic testing to a facility in which such practitioner has an ownership or investment interest other than ownership of investment securities purchased by the practitioner on terms available to the general public and which are publicly traded.

(b) The chairman of the Workers' Compensation Commission may, after notice and an opportunity to be heard, remove a practitioner from the list of approved physicians, surgeons, podiatrists, optometrists or dentists if such practitioner fails to meet one or more of the standards in subsection (a) of this section.

(Effective November 23, 1993)

Practitioner Fee Schedule

Sec. 31-280-2. Practitioner fee schedule

(a) Definitions

(b) Practitioner Fee Schedule

(c) Medical Advisory Board
(d) Practitioner Billing and Payment Guidelines
(e) Dispute Resolution

(Effective January 31, 1994)

Sec. 31-280-3. Practitioner fee schedule

(a) **Definitions**

For purposes of section 31-280-3 governing practitioner fee schedule, the following definitions apply:

(1) "Chairman" means the Chairman of the Workers' Compensation Commission.

(2) "CPT Code" means the descriptive terms and identifying codes used in reporting services and procedures performed by Practitioners as listed in the American Medical Association's Physician's Current Procedural Terminology (CPT).

(3) "Dispute Resolution Panels" means the three-member panels appointed by the Chairman pursuant to subsection (e) (2) of these regulations to consider and resolve disputes regarding CPT Code assignment or other claims and payment issues.

(4) "Employer" means any employer subject to the requirements of the Workers' Compensation system as further defined in Conn. Gen. Stat. 31-275 (10).

(5) "Annual Increase" means the annual percentage increase in the consumer price index for all urban workers which according to Public Act 93-228 shall be applied to the Practitioner Fee Schedule as a limit on the annual growth in total medical fees.

(6) "Payor" means any person, corporation, firm, partnership, other entity, or the State of Connecticut and any public corporation within the State that, based on statutory obligation or contract, makes payment to Practitioners for services provided to employees under the Workers' Compensation system, including but not limited to insurance companies, self-insured employers, and mutual insurance associations or trusts.

(7) "Practitioner" means any health care practitioner authorized by the Workers' Compensation Commission to provide services to eligible employees under the Workers' Compensation Act.

(8) "Practitioner Billing and Payment Guidelines" means the manual prepared and published by the Chairman in accordance with Public Act 93-228 to set guidelines for the billing, claims payment review, and payment process for Practitioners, Payors and Reviewers.

(9) "Practitioner Fee Schedule" means the schedule of payments to Practitioners which is established, published, and updated annually by the Chairman in accordance with these regulations.

(10) "Reviewer" means any person, corporation, firm, partnership or other entity, which may be a Payor or a third-party entity acting on behalf of a Payor, that reviews, examines, evaluates or makes recommendations for payment of any bills, claims or fees submitted by a Practitioner to a Payor under the Workers' Compensation system. The term "Reviewer" shall not apply to individual employees of a Reviewer company providing claims payment

review services.

(b) **Practitioner Fee Schedule**

(1) The Chairman shall establish, publish and update annually in accordance with section 31-280-3 a Practitioner Fee Schedule.

(2) No later than sixty (60) days following the effective date of section 31-280-3, the Chairman shall establish a Practitioner Fee Schedule listing fees by CPT Codes. Such Practitioner Fee Schedule shall be calculated from a data base consisting of current charge data (collected within the past year). Such data may be broadly based and may include health and accident claims as well as Workers' Compensation claims. Such data base shall include representative data from the entire State of Connecticut. Practitioner fees shall be uniform throughout the State. Separate conversion factors may be established for surgical, medical, radiology; pathology, anesthesiology and other types of services or claims as determined by the chairman.

The Practitioner Fee Schedule for physicians shall be established as the 74th percentile level of the data base of statewide charges. The fee schedule for non-physician practitioners billing under the same CPT Code, except for physical medicine, shall be seventy percent (70%) numerically of the Practitioner Fee Schedule for physicians. The fee will be determined by the licensure of the practitioner providing the service, not the licensure of the practitioner billing for the services.

The Chairman may contract with a private data company (1) to obtain statistically valid and reliable charge data, conversion factors, unit values, and follow-up days; and (2) to consult in establishing and updating the Practitioner Fee Schedule.

(3) The Practitioner Fee Schedule shall be adjusted and published annually with respect to the factors listed in subsection (b) (2) of section 31-280-3, upon consultation with the Medical Advisory Board and subject to the Annual Increase limit established by Public Act 93-228.

(4) Except where the Practitioner and Payer have entered into a specific written agreement providing otherwise, Provider charges for medical services provided to employees under the Workers' Compensation System shall be recognized in accordance with these regulations and the Practitioner Billing and Payment Guidelines and payable up to the Practitioner Fee Schedule. Except as otherwise provided by contract, the Practitioner Fee Schedule shall be the maximum permissible payment amount.

(c) **Medical Advisory Board**

(1) The Medical Advisory Board shall advise the Chairman concerning the ongoing development and updating of the Practitioner Fee Schedule established and updated pursuant to these regulations. The Board shall review and assist the Chairman in the implementation of the Practitioner Fee Schedule, the management of disputes, issues concerning communications with Practitioners (including explanations of benefits), and any other issues that arise regarding payment review.

(2) The Medical Advisory Board shall annually review the Practitioner Billing and Payment Administration Guidelines and recommend any necessary changes.

(d) **Practitioner Billing and Payment Guidelines**

(1) Pursuant to Public Act 93-228, the Chairman shall publish Practitioner Billing and Payment Guidelines. Such guidelines shall govern the billing, claims payment review, and payment process for Practitioners, Reviewers and Payors. The Medical Advisory Board shall assist the Chairman in accordance with Subsection (c) (2) of section 31-280-1.

(2) Practitioners shall bill for Workers' Compensation services using CPT Codes and the Practitioner Billing and Payment Guidelines.

(3) The guidelines shall require that Practitioners submit all bills using the HCFA 1500 form or its current equivalent beginning no later than October 1, 1993.

(4) Practitioners shall use a system of global billing for surgery claims, combining office visits with surgical fees in accordance with the guidelines.

(5) Additional areas to be covered by the guidelines include but shall not be limited to procedures for billing and payment, assignment of CPT Codes, and retention of billing documentation by Reviewers and Payors.

(e) **Dispute Resolution**

(1) Each Payor shall establish an internal mechanism for resolving disputes regarding CPT Code assignment, claims payment review and other payment issues. A written description of such dispute resolution mechanism shall be filed with the Chairman not later than sixty (60) days following the effective date of these regulations and shall be provided by the Payors to Practitioners upon request. The dispute resolution mechanism shall provide for a Payor response no later than 60 days from the submission of the dispute by the Practitioner.

(2) Effective no later than sixty (60) days following the effective date of these regulations, the Chairman shall maintain a list of members to serve on the Dispute Resolution Panels. Such Dispute Resolution Panels shall resolve issues that cannot be resolved through the internal mechanisms established by Payors. Each panel shall consist of three members appointed by the Chairman: one Reviewer or Payor representative, one Practitioner representative, and one representative from the Commission. Payor representatives shall be appointed from lists of nominations provided by the Connecticut Business and Industry Association and the Insurance Association of Connecticut. Practitioner representatives shall be appointed from a list of nominations provided by the professional society that represents the Practitioner, i.e., the Connecticut State Medical Society, the Connecticut Chiropractic Association, or the Connecticut Physical Therapy Association.

(3) A Practitioner may request review of unresolved payment issue disputes by submitting a written request for review to the Chairman and the Payor. Within 21 days following receipt of such request, the Payor, or a Reviewer acting on behalf of the Payor, must forward all supporting documentation for the claim to the Dispute Resolution Panel.

(4) The Dispute Resolution Panel will consider the evidence previously submitted in the internal dispute resolution process and, at the discretion of the Panel, other relevant factors (which may include utilization). Any party may submit written argument with copies

provided to other parties, but may not submit new evidence as part of such review unless permitted by the Panel.

(5) The Dispute Resolution Panel shall consider the matter and issue a written determination within 90 days following receipt of the request for review. The determination of the Dispute Resolution Panel shall be final and the only appeal shall be in accordance with section 31-301 of the Connecticut General Statutes.

(Effective January 31, 1994)

Agency

Workers' Compensation Commission

Subject

Structure and Operation of Workers' Rehabilitation Programs

Inclusive Sections

§§ 31-283a-1—31-283a-6

CONTENTS

Structure and Operation of Workers' Rehabilitation Programs

Sec. 31-283a-1. Definitions

As used in sections 31-283a-1 through 31-283a-6, inclusive:

(1) "Chairman" means the Chairman of the Connecticut Workers' Compensation Commission, selected by the Governor pursuant to Section 31-276, whose powers are enumerated in Sec 31-280(b); or his designee.

(2) "Commissioner" means one of the sixteen (16) Workers' Compensation Commissioners as defined in Section 31-275(3).

(3) "Rehabilitation Programs" means the following vocational rehabilitation services provided by the Workers' Compensation Commission, with available supporting benefits, to employees who have suffered disabling injuries within the provisions of the Connecticut Workers' Compensation Act:

(A) Outreach
(B) Testing and evaluation
(C) Counseling
(D) Training
(E) Job placement
(F) Post-placement follow-up

(Adopted effective October 18, 1995)

Sec. 31-283a-2. Vocational rehabilitation benefit eligibility

As provided in Section 31-283a of the general statutes, a disabled employee may be eligible for vocational rehabilitation benefits, provided the Chairman or his designee finds that:

(1) The employee, employer, insurance carrier, physician, Commissioner, or other interested party has requested vocational rehabilitation services by completing and filing an application signed by the applicant for vocational rehabilitation benefits with the Chairman or his designee.

(2) There exists a permanent impairment which substantially disables the employee for a significant period of time from performing the worker's most recent or customary type of work and that such permanent impairment is a direct result of an injury found to be compensable under Chapter 568 of the general statutes by a Commissioner, a voluntary agreement, an award; or in lieu of those, a stipulation approved by a Commissioner.

(Adopted effective October 18, 1995)

Sec. 31-283a-3. Vocational rehabilitation programs and benefits provided to eligible employees

(a) **Vocational evaluation.** Each employee may be evaluated to determine the need and/or type of rehabilitation services which may be provided. This evaluation may include a summary of physical, psychological, intellectual capabilities and limitations, a work

accommodation analysis, work history, education, inventories of transferable skills and vocational interests, and all other data pertinent to the individual's vocational capabilities.

(b) **Employment capabilities determination.** Following vocational evaluation, the Chairman or his designee shall determine whether:

(1) The employee has the capacity to return to his or her customary or most recent work. In this case all services will be terminated.

(2) The employee has the capacity to return to his or her customary or most recent work provided job modifications are effected. In this case the Commission will assist the employee in obtaining suitably modified employment.

(3) The employee possesses adequate vocational skills to obtain other employment. In this case the Commission will assist the employee in obtaining suitable employment.

(4) The employee's current medically documented residual capacities and vocational status is so unstable or unclear that no meaningful rehabilitation effort is practicable. In this case the Chairman or his designee will defer further determination until a change in circumstances warrants reconsideration.

(5) The employee's medically documented residual capacities present a reasonable expectation of successful completion of a program of vocational rehabilitation including but not limited to reemployment by the same employer in a different capacity, on-the-job training, or vocational education for a new occupation. In this case the Chairman or his designee will provide an appropriate program.

(6) The employee lacks sufficient transferable skills to function adequately within the labor market to which the employee is most likely to be exposed. In this case the Chairman or his designee will provide an appropriate program.

(7) Accommodation of the employee's vocational goals would not require modification of the policies, practices and procedures of the rehabilitation program such that it would cause a fundamental alteration of the nature of the services offered thereunder.

(c) **Determination of employment objective.** The Chairman or his designee shall determine which of the following employment objectives is the most feasible in each case:

(1) Reemployment by the same employer with appropriate job modification.

(2) Reemployment by the same employer after the employee has received vocational rehabilitation services.

(3) Reemployment in the competitive labor market with other than the original employer in a job after the employee has received vocational rehabilitation services.

(d) **Establishment and structure of vocational rehabilitation plan.** The Chairman or his designee will prepare an individual rehabilitation plan and trainee program manual for each disabled employee whose determined employment objective will require the disbursement of funds. Such plan shall be approved by the Chairman or his designee and contain the following data:

(1) Employment objective;

(2) Proposed beginning and ending dates;

(3) Program content;

(4) Program source;

(5) Special conditions upon which the program is based;

(6) All other data including the cost effective factors as may be required by the Chairman or his designee;

(7) Total estimated program cost;

(8) Program approval as evidenced by the signatures of the injured employee, counseling coordinator, and the Chairman or his designee. No commitment of funds shall be effected or disbursement made in the absence of these approvals.

(e) **Job placement.** The Chairman or his designee will provide appropriate services for each eligible employee for whom reemployment is proposed. These may include, but are not limited to, the following:

(1) Formal training in job seeking skills;

(2) Job market research and assessment;

(3) Job accommodation analysis;

(4) Job placement assistance as appropriate or through other agencies both public and private;

(5) Post-placement follow-up to assess the employee's successful reentry into the labor market.

(f) **Vocational counseling.** The Chairman or his designee shall provide appropriate individual counseling and rehabilitation services to each eligible employee in a timely manner.

(Adopted effective October 18, 1995)

Sec. 31-283a-4. Rehabilitation allowance payments

(a) **Eligibility.** The Chairman or his designee may provide to each person for whom a vocational rehabilitation plan has been approved, timely allowances for basic living expenses of the employee while engaged in a full-time vocational training program under the rehabilitation program's sponsorship, provided:

(1) The employee is not receiving or eligible to receive any benefits provided by Chapter 568 of the general statutes, is not receiving or eligible to receive other benefits such as, but not limited to, unemployment compensation or social security disability benefits.

(2) The employee is engaged in a training program described by a vocational rehabilitation plan requiring the trainee to be present at the place of instruction at least 25 scheduled hours, or at a college level program consisting of a course load of no less than 12 credit hours required and earned per semester, or no less than six credit hours required and earned during the summer.

(3) The trainee is adhering to the specific terms of the plan and trainee manual and is providing timely and accurate information as to training progress, performance, and attendance, as required by the Chairman or his designee.

(b) **Schedule of payments.** The Workers' Compensation Commission may pay vocational rehabilitation allowances to eligible trainees in accordance with the following:

(1) The allowance paid each trainee shall be a percentage of the benefits which the trainee would receive for the same period if eligible for compensation provided in Section 31-307, 31-307a, 31-308(a), or 31-308a of the general statutes; which percentage shall be established at least annually by the Chairman or his designee. An additional allowance includes travel expenses from the employee's home to the training facility and return.

(2) Each trainee's starting date and payment amount shall be approved by a Workers' Compensation Commissioner and submitted to the Chairman or his designee on an authorization for rehabilitation allowance.

(3) Payments will be made at two-week intervals, upon completion and submission to the Chairman or his designee of a claim for payment of rehabilitation allowance, at the end of each period.

(c) **Termination of payments.** The Workers' Compensation Commission shall cease to pay vocational rehabilitation allowances to any person whose training under the plan has been concluded. If payments are terminated for reasons other than scheduled expiration of the trainee's vocational rehabilitation plan, written notice of termination and the reason therefor shall be provided to the employee by the Chairman or his designee.

(Adopted effective October 18, 1995)

Sec. 31-283a-5. Discontinuance of benefits

(a) **Maintenance of benefits.** The trainee shall complete each approved vocational rehabilitation plan unless the Chairman or his designee shall find one or more of the following conditions to exist:

(1) Absences from training exceed ten percent (10%) of the scheduled instruction time for a period; being one semester or one module (a single course or unit of instruction as defined by the training school's course description).

(2) Performance is determined to be substandard, as evidenced by a grade report, transcript, or training progress report form received from the training provider.

(3) The Commission is informed by written statement from the training provider that the trainee's conduct at the training site fails to meet minimum standards as established by the training site's written policy.

(4) Trainee has willfully submitted false claims, reports or statements to the Workers' Compensation Commission.

(5) Any combination of the preceding conditions as a result of which the program no longer offers a reasonable expectation of successful conclusion.

(b) **Procedure for vocational rehabilitation plan termination.** Except for those plans terminated for reasons stated in subdivision (5) of subsection (a) of this section, no plan may be terminated except in accordance with the following procedure:

(1) The trainee shall be given written warning specifying why his or her conduct, performance or attendance record is unacceptable, and that failure to correct the deficiency shall result in his/her termination from the program.

(2) If the deficiency set forth in the warning notice has not been corrected within 30

days, or such other time specified therein, he/she shall be withdrawn from the program.

(Adopted effective October 18, 1995)

Sec. 31-283a-6. Contested vocational rehabilitation cases. Appeal process

(a) **Notice of appeal.** Any person having made application for vocational rehabilitation benefits and aggrieved by action of the Workers' Compensation Commission in withholding or providing benefits, and having been unable to effect resolution through informal discussion, shall be afforded an opportunity for hearing upon submission of a written notice of appeal to the Chairman or his designee. This notice shall include but not necessarily be limited to the following:

(1) The specific nature of the grievance;

(2) The remedy sought;

(3) Acceptable alternative remedies, if any.

(b) **Appeal procedure.** Upon receipt of a notice of appeal as provided in subsection (a) of this section the Chairman or his designee shall initiate the following appeal procedure:

(1) Within fifteen (15) days of receipt of a notice of appeal, an informal conference will be scheduled with the grievant, at a mutually acceptable time and place, for the purposes of effecting a remedy acceptable to both parties.

(2) If the informal conference does not result in resolution of the issue within 15 days, the grievant will be so informed in writing. The grievant may further pursue a remedy by submitting a written request for a hearing to the Chairman or his designee.

(3) The Chairman or his designee shall, not more than 30 days following receipt of the request for hearing, notify the employee of the time and place selected for the hearing.

(4) The Chairman shall conduct the hearing, accepting all relevant evidence, both oral and written.

(5) Within 30 days of the conclusion of the hearing, the Chairman shall render his written decision notifying the grievant of what remedial action, if any, the Workers' Compensation Commission is prepared to implement.

(6) The Chairman's final decision shall be binding and shall not be appealable.

(Adopted effective October 18, 1995)

Agency
Workers' Compensation Commission

Subject
Self-Insurance Certification

Inclusive Sections
§§ 31-284-1—31-284-20

CONTENTS

Self-Insurance Certification

Sec. 31-284-1. Definitions

As used in Sections 31-284-1 through 31-284-20, inclusive:

(1) "Act" means the State of Connecticut Workers' Compensation Act, Chapter 568, as amended; Sections 37-3a, 38a-470, 51-85, 52-149a, and 52-174; and Administrative Regulations 31-40v-1 through 31-40v-11, 31-279-1 through 31-279-10, and 31-280-1 through 31-280-3.

(2) "Commission" means the State of Connecticut Workers' Compensation Commission.

(3) "Chairman or his designee" means the governor-appointed chairperson of the State of Connecticut Workers' Compensation Commission pursuant to Section 31-276 whose powers are enumerated in Sec 31-280, or his designee.

(4) "Liabilities" means the amount of compensation for medical and indemnity benefits and related expenses incurred.

(5) "Outstanding Liabilities" means the estimated future costs of incurred claims.

(Adopted effective October 1, 1996)

Sec. 31-284-2. Application process

(a) **Application Filing.** An employer who seeks exemption from insuring its risk under the Workers' Compensation Act shall apply to the Chairman of the commission or his designee for the privilege of becoming an individual self-insurer. An employer who is approved to self-insure agrees to meet by cash payments, all obligations incurred by it under the Act as such become due and payable. An employer who is approved to self-insure is subject to the Commission's rules and regulations as adopted or amended and subject to the Commission's full right and authority to prescribe new and additional rules and regulations. The Commission's authority and its rules and regulations pertaining to self-insurance shall continue to apply to all employers previously self-insured until all liabilities incurred while self-insured have been fully discharged.

(b) **Application Form.** Application shall be made on the Commission's prescribed form and signed by an officer of the corporation, partnership, or the proprietor. All questions shall be answered fully and all required documentation shall be attached.

(c) **Insurance.** Workers' compensation insurance shall be maintained during the application process and until self-insurance authorization is effective. Applications from employers who do not have insurance as required by the Act pursuant to Section 31-284 of the general statutes shall not be considered.

(d) **Certificate of Self-Insurance.** Employers approved to self-insure are granted a certificate of self-insurance for a one-year period, or the otherwise stated duration on the certificate. The certificate shall be renewed annually, except for municipal employers issued certificates that are continuous until revoked. The Commission may stagger renewal dates of certificates to facilitate its workload. A certificate of self-insurance applies only to the applicant and its affiliated businesses or subsidiaries included in the application. Other affiliates or subsidiaries may be included under a self-insurer's certificate in the future upon

the approval of the Chairman or his designee.

(Adopted effective October 1, 1996)

Sec. 31-284-3. Partial self-insurance

An employer may be approved by the Chairman to self-insure the operations of one or more separately incorporated and independently managed business units and insure the remainder with an insurance carrier if it can show that there will be a clear distinction between the insured and self-insured portions of the employer's liabilities. The separation of operations and payroll shall be clear. The insured portions shall be identified by name, locations, carrier, policy number, and coverage dates. If a dispute arises as to responsibility for payment, the employer shall assume full financial responsibility to immediately render all payments to the injured employee without waiting for the dispute to be settled.

(Adopted effective October 1, 1996)

Sec. 31-284-4. Delayed start-up

If an employer has not implemented its self-insurance program within the first six (6) months following the Chairman or his designee's approval, the approval shall be void, thus requiring a new application to be filed for approval.

(Adopted effective October 1, 1996)

Sec. 31-284-5. Decisions of the commission

The Chairman or his designee may deny an application, or move to revoke a certificate of self-insurance if the employer does not have sufficient assets, net worth, or liquidity to meet its obligations, or any component of a proposed or existing self-insurance program does not meet the standards set by the Chairman or his designee.

(Adopted effective October 1, 1996)

Sec. 31-284-6. Evaluation factors

Self-insurance is a privilege and shall only be granted to those employers capable of demonstrating the following:

(1) Financial strength and stability sufficient to permit payment of all workers' compensation benefits and assessments required under the Act. Particular emphasis shall be placed upon:

(A) Sufficient working capital and cash flow to meet current and future obligations;

(B) Acceptable levels of long term debt; and

(C) Established record of financial stability and solvency.

(2) Accurate reporting and reserving of workers' compensation injuries and illnesses.

(3) Acceptable levels of work hazards as determined by loss history.

(4) Qualified personnel who shall handle the administration of claims and reserves, and deliver benefits to injured workers or their beneficiaries or dependents in a fair, efficient, and competent manner in accordance with the Act.

(5) Protection against catastrophic occurrences by purchasing excess insurance at levels approved by the Chairman or his designee.

(6) Years in business in present corporate form.

(7) Reliable sources of information provided.

(8) Satisfactory responses to all applicable questions on the application.

(Adopted effective October 1, 1996)

Sec. 31-284-7. Reconsideration

An employer whose initial or renewal application for self-insurance has been denied, or a self-insurer who takes exception to excess insurance or reserve requirements made upon it, may request a reconsideration by the Chairman or his designee. The request for reconsideration shall be submitted in writing and be received by the Chairman or his designee no later than 30 days after the notice of the Commission's determination.

(Adopted effective October 1, 1996)

Sec. 31-284-8. Security requirements

As a condition of self-insurance, employers shall post and maintain a security deposit for the certificate period in a form and amount approved by the Chairman or his designee, unless waived by the Chairman or his designee. All self-insurers shall execute a security deposit agreement as part of the application process. If approved, an applicant shall post a security deposit in accordance with the security deposit agreement. Security shall be provided in the form of a surety bond, an irrevocable funded trust, an irrevocable letter of credit, or cash deposit.

(1) Surety bonds shall be issued on the prescribed form. Bonds shall not be released until either a new bond is executed which fully replaces and assumes the liabilities of the previous bond or until all obligations have been fully discharged under a terminated self-insurance program.

(2) Irrevocable funded trusts may be used as a security deposit. The fund's trustee is required to report the fund's assets, market value, and investment activity on a periodic basis. Interest or dividends shall accumulate to the trust. Trust assets may not be transferred or reverted back to the employer unless amounts in excess of sufficient funding needs are approved by the Chairman or his designee.

(3) Irrevocable letters of credit and/or cash deposits may be accepted only at the discretion and approval of the Chairman or his designee. Letters of credit shall renew automatically, have a minimum sixty (60) day cancellation by certified mail, and not be subject to any conditions by the bank or contingent upon reimbursement. Letters shall be issued on the prescribed forms and issued by an acceptable bank with a branch office or confirming bank in Connecticut. Any outstanding liabilities under a letter shall be secured with a surety bond at least ten (10) days before any cancellation takes effect or the letter will be drawn on and the monies deposited to an account under the State's control. Cash deposits shall be made to a custodial account with the State or an approved depository institution. The account

shall be assigned to the State by the employer to secure the payment of the employer's obligations under the Act.

(4) Funds held by the State as security shall be accompanied by appropriate legal instruments which designate their use solely for payment of workers' compensation obligations, and effectively assign right, title, and interest in such funds to the State. No judgment creditors, other than claimants entitled to benefits under the Act, have a right to levy upon any of a self-insurer's security deposits made under this regulation.

(Adopted effective October 1, 1996)

Sec. 31-284-9. Guarantee of liabilities

Each subsidiary or affiliate company shall provide a guarantee by the parent corporation for payment of benefits under the Act with an accompanying authorization resolution. The form and substance of such guarantee shall be approved by the Chairman or his designee. Separate legal entities may be self-insured under one certificate only if they are majority-owned subsidiaries or if the same person or group of persons owns a majority interest in such entities. An agreement jointly and severally binding each entity for the liability created under the approval shall be executed in a form acceptable to the Chairman or his designee. Execution of a Guarantee of Liabilities shall not reduce the amount of required security.

(Adopted effective October 1, 1996)

Sec. 31-284-10. Excess insurance

(a) Excess insurance shall be maintained by each self-insurer unless waived by the Chairman or his designee.

(b) Excess insurance shall be issued by an insurance carrier permitted to write workers' compensation insurance in the State of Connecticut. The Chairman shall approve the issuing carrier, coverage language, upper limits, and retained amounts of the policy. Thirty (30) days advance notice to the Chairman or his designee is required for cancellation.

(c) Failure to maintain said coverage will be grounds for automatic revocation of a self-insurance certificate.

(Adopted effective October 1, 1996)

Sec. 31-284-11. Reporting requirements

(a) **Financial Reports.** Initial applications shall be accompanied by the three (3) proceeding fiscal years' independently audited financial reports. Renewal applicants shall submit the latest available fiscal year-end audited financial reports. Current self-insurers shall submit audited financial year-end reports within thirty (30) days of availability.

(1) If the latest audited financial statement is more than six (6) months old, the corporate treasurer, partner, or proprietor, shall file an affidavit stating that there has been no significant deterioration in the financial condition of the applicant.

(2) If there has been a material adverse change since the date of the audited financial report, an explanation from the company treasurer shall be attached or a new statement

prepared and submitted.

(b) Interim reports may be requested by the Chairman or his designee when the financial strength of the employer is at question as determined by the Chairman or his designee.

(c) All applicants shall provide a description of the primary and secondary sources of funds for the payments of claims.

(Adopted effective October 1, 1996)

Sec. 31-284-12. Claims reporting requirements

Self-insurers shall maintain true and accurate loss records. All self-insurance applicants and self-insurers shall report loss information. Losses shall be reported at least annually at the time of renewal, but more frequent reports may be required.

(Adopted effective October 1, 1996)

Sec. 31-284-13. Reserves

All self-insurers are required to evaluate and maintain adequate records of the future liability of all claims incurred under its self-insurance program. Future liabilities shall represent the probable total cost of compensation over the life of each claim, based on all available information at the valuation date for the period of time covered by the annual report. Reserves shall be reported at least annually at the time of renewal, more frequent reports, however, may be required.

(Adopted effective October 1, 1996)

Sec. 31-284-14. Additional reporting requirements

(a) The Chairman or his designee shall be notified within ten (10) days by certified mail of any bankruptcy filing by a current or former self-insurer.

(b) If there is a change in the majority ownership of the self-insurer, through sale, merger, or corporate restructuring, the self-insurance certification shall automatically terminate and the employer shall reapply in order to continue self-insurance. The Chairman or his designee may extend termination of the self-insurance certification to allow for filing. In some cases, it may be possible to amend and transfer an existing certificate without a new application.

(Adopted effective October 1, 1996)

Sec. 31-284-15. Renewal applications

(a) Renewal applications are to be submitted sixty (60) days prior to the expiration of the current certificate of self-insurance. The application is to be completed in full and accompanied by:

(1) Self-insurer's latest audited annual financial report;

(2) Certificate of insurance that shows continued or renewed excess insurance coverage; and

(3) Documented compliance with security requirements.

(b) Municipal employers issued certificates that are continuous until revoked shall submit

a completed municipality update form by each November first (November 1) until all self-insured claims are fully discharged.

(Adopted effective October 1, 1996)

Sec. 31-284-16. Termination of self-insured status

(a) An employer may voluntarily terminate its self-insurance privileges of any or all of its operations by writing to the Chairman or his designee and providing the reason for the termination, the date and time of the intended termination, the carrier name, policy number and effective date of the full coverage insurer assuming the risk after the self-insurance termination, and full identification of the purchaser of any self-insured operations sold, including the date and time the sale is effective.

(b) The Chairman or his designee shall be provided with thirty (30) days advance written notice of an employer's intent to terminate its self-insurance, but no later than ten (10) days after a change in ownership in the case of a sale.

(c) All former self-insurers are responsible for any and all workers' compensation liabilities incurred during the self-insurance period. The incurred liabilities of a subsidiary or division are not subject to transfer to another entity through a sale unless the liabilities are to be fully covered under a workers' compensation insurance policy or a qualified self-insurance program. Such transfer shall have prior written approval from the Chairman or his designee.

(d) Whenever an employer exits the self-insurance program, the Chairman or his designee may require such employer to provide all available information regarding incurred liabilities.

(e) An employer whose self-insurance certification has been terminated or revoked shall continue to provide competent administration of incurred claims. If it is determined by the Chairman or his designee that the claims are not being competently administered or reported, the Chairman or his designee may notify the employer of the problem and require it to be addressed within sixty (60) days. If the problem is not addressed within sixty (60) days, the Chairman or his designee may require the employer to select a new administrator. If the employer fails to enter into an agreement with a new administrator in a timely manner the Chairman or his designee may designate a new claims administrator and the costs shall be borne by the employer.

(f) The Chairman or his designee may seek to enjoin a currently or previously self-insured employer from liquidating its assets, selling its tangible Connecticut property, or moving its operations out of Connecticut before it has received approval from the Chairman or his designee of an acceptable exit plan to provide for the continued payment of its outstanding workers' compensation liabilities.

(Adopted effective October 1, 1996)

Sec. 31-284-17. Assessments

The assessments made by the Connecticut State Treasurer under statutory provisions for

the expenses of the operation of the Workers' Compensation Commission and the Second Injury Fund, or a subsequent guaranty fund, shall be paid in full. Delinquent assessments may be grounds for the revocation of a certificate of self-insurance. Each self-insurer shall report to the State Treasurer by April first (April 1) of each year the total amount of compensation paid in the previous calendar year on all losses incurred during any year of its self-insurance program. Administrative assessment payments are required of former self-insurers based upon any cases incurred during the entire period of self-insurance until all the cases are closed.

(Adopted effective October 1, 1996)

Sec. 31-284-18. New regulation grace period

If the specific requirements prescribed in Sections 31-284-1 through 31-284-17 would create a hardship on an existing self-insurer, the self-insurer may apply to the Chairman or his designee for a temporary deviation waiver. The request shall be made in writing before any deadline prescribed in Section 31-284-7 and should include a detailed explanation for the request and the estimated time needed to comply. The request may also suggest alternatives for achieving substantial compliance during such grace period. Approval of a temporary deviation waiver is discretionary upon showing of hardship. Approvals shall be in writing. Approvals will advise the self-insurer of its new deadline for regulatory compliance and may contain conditions necessary to the approval. The Chairman or his designee will not grant a temporary deviation waiver if there is reason to believe that a self-insurer is unable to comply with specific requirements because of deterioration in its financial position or if such waiver will impede the Commission's ability to obtain relevant information to monitor a self-insurer's financial condition.

(Adopted effective October 1, 1996)

Sec. 31-284-19. Severability

If any portion of this Section or its application is held invalid, remaining Sections or separate applications shall not be affected, to the end that the Sections of this regulation are severable.

(Adopted effective October 1, 1996)

Sec. 31-284-20. Grandfathered employers

These regulations apply to any self-insurance program approved by the Chairman or his designee on or after October 1, 1996. Employers with self-insurance programs approved by the Chairman or his designee prior to October 1, 1996 will continue to be covered by the requirements set forth by the Chairman at the time they were first approved, however, if the program has been approved for two (2) or more years, then at the time of the program's last renewal.

(Adopted effective October 1, 1996)

Agency
Worker' Compensation Commission

Subject
Filing of Voluntary Agreements

Inclusive Sections
§§ 31-296-1—31-296-2

CONTENTS

Filing of Voluntary Agreements

Sec. 31-296-1. Voluntary agreements

A voluntary agreement shall be prepared by the employer or his insurer in connection with all cases concerning which there is no dispute that the claimant suffered an accident and injury arising out of and in the course of his employment causing either temporary partial or temporary total disability beyond the three-day waiting period. The voluntary agreement shall be submitted to the claimant for execution by him and forwarded by the employer or its insurer to the commissioner having jurisdiction within three weeks after the employer has actual knowledge of the accident and that the disability will extend beyond the three-day waiting period. Failure of the employer to furnish the insurer with a wage statement for the computation of the proper compensation rate shall not excuse failure to comply with the provisions of this section. Failure or inability of the employer to secure a medical report shall not excuse failure to file a voluntary agreement whenever the employer or the insurer has actual knowledge, or with reasonable diligence could have secured knowledge, that the claimant was actually disabled by a compensable accident. Noncompliance with this section is subject to the penalty provided in section 31-288 of the general statutes.

(Effective January 5, 1971)

Sec. 31-296-2. Undetermined liability

In any case in which the employer or the insurer doubts the fact of accident or the causal relationship between the accident and the disability, but wishes to make payment without prejudice and without admitting liability, he shall notify both the claimant and the commissioner by letter that payment will be made without prejudice. Such letter shall contain a statement of the average weekly wage, the compensation disability rate, the number of dependent children or stepchildren and the total weekly benefit to be paid. A formal notice of the employer's intention to contest liability (Form 43) shall accompany such letter to protect the respondent's rights. Payments without prejudice shall be made for not more than six weeks. If, at the end of such period, the employer or insurer has completed his investigation and determines the accident is compensable, a voluntary agreement shall be offered. Otherwise, the employer shall promptly request an informal hearing.

(Effective January 5, 1971)

Agency

Workers' Compensation Commission

Subject

Appeal from Compensation Commissioner (CRB Appeal Procedure)

Inclusive Sections

§§ 31-301-1—31-301-11

CONTENTS

Appeal from Compensation Commissioner (CRB Appeal Procedure)

Sec. 31-301-1. Appeal

An appeal from an award, a finding and award, or a decision of the commissioner upon a motion shall be made to the Compensation Review Board by filing in the office of the commissioner form which such award or such decision on a motion originated an appeal petition and five copies thereof. Such appeal shall be filed within twenty days after the entry of such award or decision and shall be in substantial conformity with the forms approved by said board. Such commissioner within three days thereafter shall mail such petition and three copies thereof to the chairman of the Compensation Review board and a copy thereof to the adverse party or parties, and shall thereupon, or as soon thereafter as shall be practicable, cause to be filed with the Chairman of the Compensation Review Board a certified copy of the award or of the decision upon a motion together with a finding upon which the award was predicated, with such other parts of the record as are necessary for a proper consideration of the appeal. The commissioner shall, upon order of the Compensation Review Board, file a certified copy of any other document comprising a part of the record which the board deems necessary for the proper disposition of the appeal.

(Effective June 24, 1980; Amended December 26, 2001)

Sec. 31-301-2. Reasons of appeal

Within ten days after the filing of the appeal petition, the appellant shall file with the compensation review division his reasons of appeal. Where the reasons of appeal present an issue of fact for determination by the division, issue must be joined by a pleading filed in accordance with the rules applicable in ordinary civil actions; but where the issue is to be determined upon the basis of the finding of the commissioner and the evidence before him, no pleadings by the appellee are necessary.

(Effective June 24, 1980)

Sec. 31-301-3. Finding

The finding of the commissioner should contain only the ultimate relevant and material facts essential to the case in hand and found by him, together with a statement of his conclusions and the claims of law made by the parties. It should not contain excerpts from evidence or merely evidential facts, nor the reasons for his conclusions. The opinions, beliefs, reasons and argument of the commissioner should be expressed in the memorandum of decision, if any be filed, so far as they may be helpful in the decision of the case.

(Effective June 24, 1980)

Sec. 31-301-4. Correction of finding

If the appellant desires to have the finding of the commissioner corrected he must, within two weeks after such finding has been filed, unless the time is extended for cause by the commissioner, file with the commissioner his motion for the correction of the finding and

with it such portions of the evidence as he deems relevant and material to the corrections asked for, certified by the stenographer who took it, but if the appellant claims that substantially all the evidence is relevant and material to the corrections sought, he may file all of it so certified, indicating in his motion so far as possible the portion applicable to each correction sought. The commissioner shall forthwith, upon the filing of the motion and of the transcript of the evidence, give notice to the adverse party or parties.

(Effective June 24, 1980)

Sec. 31-301-5. Evidence to be filed by appellee

The appellee should if he deems that additional evidence is relevant and material to the motion to correct, within one week after the appellant has filed his transcript of evidence, so notify the commissioner, and at the earliest time he can procure it file with the commissioner such additional evidence.

(Effective June 24, 1980)

Sec. 31-301-6. Assignable errors

The reasons of appeal may assign, in addition to other errors: first, that the conclusions of the commissioner are legally inconsistent with the subordinate facts found; second, that the commissioner erred in refusing to grant a motion to correct the finding or in refusing to find the facts as contained in the motion.

(Effective June 24, 1980)

Sec. 31-301-7. Duty of commissioner on appeal

The commissioner shall file with the compensation review division, within a reasonable time, such motions together with his decisions thereon. If the motions are denied in whole or in part and such denial is made a ground of appeal, the commissioner shall, within a reasonable time thereafter, file in the compensation review division the transcripts of evidence as may have been taken before the commissioner in the form of testimony, or taken by him in other ways, and deemed by him to be relevant and material to these corrections.

(Effective June 24, 1980)

Sec. 31-301-8. Function of compensation review division

Ordinarily, appeals are heard by the compensation review division upon the certified copy of the record filed by the commissioner. In such cases the division will not retry the facts or hear evidence. It considers no evidence other than that certified to it by the commissioner, and then for the limited purpose of determining whether the finding should be corrected, or whether there was any evidence to support in law the conclusion reached. It cannot review the conclusions of the commissioner when these depend upon the weight of the evidence and the credibility of witnesses. Its power in the corrections of the finding of the commissioner is analogous to, and its method of correcting the finding similar to the

power and method of the Supreme Court in correcting the findings of the trial court.

(Effective June 24, 1980)

Sec. 31-301-9. Additional evidence

If any party to an appeal shall allege that additional evidence or testimony is material and that there were good reasons for failure to present it in the proceedings before the commissioner, he shall by written motion request an opportunity to present such evidence or testimony to the compensation review division, indicating in such motion the nature of such evidence or testimony, the basis of the claim of materiality, and the reasons why it was not presented in the proceedings before the commissioner. The compensation review division may act on such motion with or without a hearing, and if justice so requires may order a certified copy of the evidence for the use of the employer, the employee or both, and such certified copy shall be made a part of the record on such appeal.

(Effective June 24, 1980)

Sec. 31-301-10. Pro forma award

In case of a pro forma award by a commissioner as provided by section 31-324, Connecticut General Statutes, if a correction to the commissioner's finding is sought, an appeal to the compensation review division shall be taken but shall be confined to the issues involved in the corrections claimed.

(Effective June 24, 1980)

Sec. 31-301-11. Motion to correct not reserved

Motions to correct the finding of the commissioner cannot be reserved. They must be decided by the compensation review division.

STATE OF CONNECTICUT
COMPENSATION REVIEW DIVISION
BOARD OF COMPENSATION COMMISSIONERS

PETITION FOR REVIEW

Name Address City State Zip Code Claimant Vs Name Address City State Zip Code Employer Name Address City State Zip Code Employer's Liability Insurer	Date Rec. In Comp. Ofc. / Date FWD to CRD Filed by: Claimant Employer:_____ Insurer:_____

The undersigned party (or parties) hereby appeal(s) to the Compensation Review Division of the Board of Compensation Commissioners from the commissioner's (award) (finding and award) or (decision) dated_____

_____ _____
Signature of Appellant or Attorney Date

A statement of reasons for the appeal must be filed within ten (10) days after the filing of this petition, unless the commissioner extends the time for cause. The statement should allege why the commissioner was wrong in regard to the law, or in regard to finding or not finding important facts according to the evidence presented at the hearing.

If appellant claims the commissioner's finding of facts is wrong, a motion to correct the the finding should be filed within two (2) weeks after such finding has been filed, unless the commissioner extends such time for cause. With such a motion must be filed such parts or all of the transcript of the evidence as appellant relies on. For this purpose a transcript must be requested.

A transcript is hereby requested for this appeal. Check one: Yes_____No_____.

Appellant may also file a motion to submit additional evidence or testimony, if material, and if there were good reasons for failure to present it in hearing before the commissioner.

A motion will be filed asking permission to submit additional evidence or testimony.
Check one: Yes_____No_____.

An original and five (5) copies of this form must be completed and filed with the office of the commissioner issuing the award, finding and award or decision appealed from within ten (10) days after its entry, or the appeal will be denied.

(Effective June 24, 1980)

Agency
Workers' Compensation Commissioners

Subject
Rehabilitation of Employees Who Have Suffered Compensable Injuries

Inclusive Sections
§§ 31-313-1—31-313-2

CONTENTS

Rehabilitation of Employees Who Have Suffered Compensable Injuries

Sec. 31-313-1. Definitions

"Medical treatment" for the purpose of these regulations means any treatment intended to cure or improve the employee's physical or mental condition, including necessary prosthesis, made necessary by a compensable accident. "Rehabilitation" means the restoration to useful activity of injured employees who have reached maximum improvement with medical treatment. These reulations shall not be construed to be a limitation upon the injured employee's right to all reasonable and proper medical treatment. Ordinarily rehabilitation will be used to train injured employees, who are by reason of their injury precluded from returning to their usual occupation, to engage in other gainful occupations.

Sec. 31-313-2. Administrative procedures

(a) After a compensable injury of the type which causes both the employer-insurer and the employee to agree that rehabilitation training is desirable and further to agree on the type and extent of such training, the employer-insurer may notify the commissioner by letter that it is complying with the provisions of section 31-313 of the general statutes by agreement with the employee. The letter should indicate the type of rehabilitation training being furnished and should further indicate that the employer-insurer is reimbursing the employee for the actual cost of such rehabilitation training up to fifteen dollars per week.

(b) If either the employee or the employer-insurer feels that rehabilitative training under this section would be of benefit in returning the injured employee to productive activity, but the parties cannot agree on the issue, either may apply to the commissioner and request a conference. At the time of such request the applying party should indicate the nature and type of rehabilitative training desired, the name of the institution or individual who is suggested as a desirable source of such training and, if possible, an outline of the claimant's qualifications to be a suitable candidate for such training. Upon the receipt of such a request the commissioner shall promptly assign the matter for a conference. If at such conference agreement cannot be reached between the parties, the commissioner shall upon request of any party assign the matter for a formal hearing and at such hearing he shall hear all proper evidence material to the issue.

(c) After such hearing the commissioner shall make a finding and award based on the evidence submitted.

(d) The law provides that the employee shall receive weekly payments up to fifteen dollars per week to pay for rehabilitation treatments. Any excess in cost over the fifteen dollars a week would be the personal responsibility of the employee. It is suggested that by agreement of the parties the payments for rehabilitative treatments up to the sum of fifteen dollars per week may be made directly to the person or institution furnishing such rehabilitation to the employee on behalf of the employee. If, however, the employee does not wish to agree to this method of payment, the employee shall personally pay for the rehabilitative treatments and each week submit a receipt to the employer-insurer so that he

may be reimbursed up to the amount of fifteen dollars.

Agency
Workers' Compensation Commissioners

Subject
Filing of Accident Reports

Section
§ 31-316-1

CONTENTS

Filing of Accident Reports

Sec. 31-316-1. Accident reports

An accident report, on Form 15, shall be filed with the commissioner having jurisdiction, in duplicate, within the week following the date of accident, for each accident resulting in either total or partial incapacity of one day or more. Such report does not constitute admission of liability. Noncompliance with this section is subject to the penalty provided in section 31-288 of the general statutes.

(Effective January 5, 1971)

Agency
Office of the Treasurer/Second Injury Fund

Subject
Second Injury Fund Assessment on Employers

Inclusive Sections
§§ 31-349g-1—31-349g-9

CONTENTS

Second Injury Fund Assessment on Employers

Sec. 31-349g-1. Definitions

As used in sections 31-349g-1 through 31-349g-9, inclusive:

(1) "Budget" means projected fiscal year revenues and expenses of the Fund as established pursuant to Section 31-349g-2 of the Regulations of Connecticut State Agencies.

(2) "Custodian of the Fund" means the Treasurer of the State of Connecticut.

(3) "Fiscal Year" means the fiscal year of the State of Connecticut which commences on July 1 and ends on the following June 30.

(4) "Fund" means the Second Injury Fund established and described in chapter 568, part E of the General Statutes.

(5) "Insured Employer" means an employer that satisfies its workers' compensation obligation by purchasing a workers' compensation and employers liability insurance policy. "Insured Employer" includes members of Interlocal Risk Management Agencies, as defined in sections 7-479a through 7-479i of the general statutes and employer's mutual insurance associations as defined in sections 31-328 through 31-339 of the general statutes.

(6) "Insurer" means stock and mutual companies authorized to provide workers' compensation and employers liability insurance in accordance with applicable laws of this state. "Insurer" includes Interlocal Risk Management Agencies as defined in sections 7-479a through 7-479i of the general statutes and employer's mutual insurance associations as defined in sections 31-328 through 31-339 of the general statutes.

(7) "Paid Losses" for Insurers means statutory paid losses as reported on page 14, line 16 of the statutory annual statement filed with the insurance commissioner; plus any loss payments within deductible limits on workers' compensation policies; plus any other third party recoveries; less Fund assessments included on page 16, line 16 of the statutory annual statement; less any amount included in direct losses paid but not covered by the Connecticut Workers' Compensation Act, such as payments under the United States Longshore and Harbor Workers' Compensation Act and employers liability coverage under the workers' compensation and employers liability policy. For Self-Insured Employers, "paid losses" means the total indemnity and medical expenses paid in accordance with the Connecticut Workers' Compensation Act.

(8) "Premium Surcharge" means an amount payable by each Insured Employer to satisfy its obligation to the Fund. The premium surcharge shall be equal to the Premium Surcharge Rate multiplied by the Insured Employers' Standard Premium.

(9) "Premium Surcharge Rate" means a factor established by the Custodian of the Fund, which shall be applied to an Insured Employer's workers' compensation policy Standard Premium to determine its Premium Surcharge. The term "Premium Surcharge Rate" includes any such factor established pursuant to subdivision 2 of subsection (b) of section 31-349g-5 of the regulations of Connecticut State Agencies.

(10) "Self-Insured Employer" means any employer to whom a certificate of self-insurance has been issued pursuant to Section 31-284 of the General Statutes.

(11) "Standard Premium" means the direct written premium determined for each

workers' compensation and employers liability insurance policy on the basis of authorized rates, including expense provisions and applicable rate deviations or average prospective premium credit, applicable experience rating modification and minimum premium. Such direct written premium will be determined without regard to when or whether the premium on the policy is paid. Standard Premium does not include the following items which are considered in calculating the total cost of coverage: (a) Expense constant, (b) Premium discount, (c) Modification of individual risk expense provision, (d) Retrospective rating adjustments, (e) Assigned Risk Adjustment Program (ARAP) surcharge, (f) Second Injury Fund Premium Surcharge, (g) Workers' Compensation Commission Funds surcharge, (h) Deductible program credit, and (i) United States Longshore and Harbor Workers' Compensation Act coverages. Direct written premium excludes premium assumed or ceded in a reinsurance transaction. Nothing in the definition of standard premium shall prohibit an insurer from excluding written premium not collectable due to policy cancellation.

(Adopted effective January 5, 1996)

Sec. 31-349g-2. Fund budget

Commencing May 1, 1996 and on or before May 1 of each year thereafter, the Custodian of the Fund shall establish a budget which shall be an estimate of the revenues and expenses of the Fund for the subsequent fiscal year. The Custodian of the Fund shall consider the financial condition and liabilities of the Fund and shall provide for a contingency reserve in the budget.

(Adopted effective January 5, 1996)

Sec. 31-349g-3. Reporting of paid losses

On or before April 1, 1996 and annually thereafter, all Insurers and Self-Insured Employers shall report to the Custodian of the Fund, and to the insurance commissioner, Paid Losses for the preceding calendar year in a manner and form prescribed by the Custodian of the Fund.

(Adopted effective January 5, 1996)

Sec. 31-349g-4. Apportionment of assessments

(a) Commencing on or before May 1, 1996 and annually thereafter, the Custodian of the Fund shall determine from the paid loss data submitted by Insurers and Self-Insured Employers the overall Paid Losses in the Connecticut workers' compensation system for the immediately preceding calendar year.

(b) The Custodian of the Fund shall calculate the pro rata share of Paid Losses attributable to Insured Employers, in the aggregate, and Self-Insured Employers, in the aggregate, which shall determine the proportion of Budget obligations to be assumed by each such aggregate group of employers.

(Adopted effective January 5, 1996)

Sec. 31-349g-5. Calculation of assessments

(a) **Self-Insured Employers**

(1) The pro rata share of Budget obligations attributable to Self-Insured Employers shall be collected through an assessment on all Self-Insured Employers, based on Paid Losses for the preceding calendar year, at a rate and schedule to be determined by the Custodian of the Fund prior to the commencement of the fiscal year.

(2) In the event the Custodian of the Fund determines there is a material change in the Budget, the Custodian of the Fund may revise the rate and schedule of assessments on Self-Insured Employers as necessary to satisfy the pro rata share of Budget obligations attributable to Self-Insured Employers.

(b) **Insured Employers**

(1) The pro rata share of Budget obligations attributable to Insured Employers shall be collected through an identifiable Premium Surcharge on all workers' compensation and employers liability insurance policies with an effective date on or after July 1, 1996. On or before May 1, 1996 and on or before May 1 annually thereafter, the Custodian of the Fund shall determine and publish the Premium Surcharge Rate for policies with an effective date during the next Fiscal Year. Such Premium Surcharge Rate shall be based upon the Custodian of the Fund's projection of total Standard Premium for such Fiscal Year. Every Insurer shall provide to the Custodian of the Fund such information as the Custodian of the Fund may request in order to make such projection. The Premium Surcharge Rate shall be sufficient to generate revenue needed to satisfy the pro rata share of Budget obligations attributable to Insured Employers.

(2) The Custodian of the Fund may determine and publish a different Premium Surcharge Rate, including an interim Premium Surcharge Rate, based upon information received from the insurance commissioner, for policies of employers in the assigned risk pool which recognizes the assigned risk rate differential approved by the insurance commissioner.

(3) In the event that the Custodian of the Fund determines there is a material change in the Budget, the Custodian of the Fund may revise the Premium Surcharge Rate as necessary to satisfy the pro rata share of Budget obligations attributable to Insured Employers. The Custodian of the Fund shall determine and publish the revised Premium Surcharge Rate to be effective for policies with an effective date on or after the 60th day after such publication.

(c) **Insured Employers That Become Self-Insured**Any Insured Employer that becomes a Self-Insured Employer shall be assessed based upon Paid Losses paid by it or on its behalf by its former Insurer or any other party during the preceding calendar year.

(Adopted effective January 5, 1996)

Sec. 31-349g-6. Collection and remittance of assessments

(a) **Self-Insured Employers**

The Custodian of the Fund shall notify each Self-Insured Employer of its pro rata share of any scheduled assessment under subdivision (1) of subsection (a) of section 31-349g-5 of the regulations of Connecticut State Agencies. Each Self-Insured Employer shall remit

such amount to the Custodian of the Fund within thirty (30) days after any such notice.

(b) **Insured Employers**

(1) Every Insurer shall collect from each of its policyholders, on behalf of the Custodian of the Fund and in accordance with section 31-349g-5 of the regulations of Connecticut State Agencies, the Premium Surcharge, which shall be stated separately on the policy or on a separate document. An insurer may cancel a workers' compensation policy for an employer's non-payment of the Premium Surcharge.

(2) Each Insurer shall report and remit to the Custodian of the Fund, within forty-five (45) days following the last day of the calendar quarter, an amount equal to (i) the stated Premium Surcharge for all policies with an effective date during the quarter, and (ii) the Premium Surcharge due to adjustments made to Standard Premium during the quarter for all policies with an effective date on or after January 1, 1996 and prior to the quarter. The Custodian of the Fund shall prescribe the form of the report and remittance.

(3) For purposes of sections 31-349g-1 through 31-349g-9, Interlocal Risk Management Agencies may remit the Premium Surcharge ratably over the four quarters of the Fiscal Year.

(4) Standard Premium reported by Insurers shall be final except for adjustments made as a result of payroll audits, classification changes, policy cancellations or other similar adjustments. Adjustments to Premium Surcharge based on any such adjustment to Standard Premium shall be made at the Premium Surcharge Rate in effect for the policy being adjusted.

(Adopted effective January 5, 1996)

Sec. 31-349g-7. Audit

The Custodian of the Fund shall have the right to perform an audit on any Self-Insured Employer, Insured Employer, or Insurer relative to any information or payment required to be provided to the Custodian of the Fund pursuant to sections 31-349g-1 through 31-349g-9.

(Adopted effective January 5, 1996)

Sec. 31-349g-8. Penalty for failure to pay assessment

Any employer who fails to pay the amount of any assessment within the time prescribed pursuant to section 31-349g-6 shall pay interest on such deficiency at the rate of fifteen per cent per annum from the due date to the payment date.

(Adopted effective January 5, 1996)

Sec. 31-349g-9. Interim premium surcharge

(a) An interim Premium Surcharge Rate of fifteen percent on Standard Premium shall apply to all workers' compensation and employers liability policies with an effective date between January 1, 1996 through June 30, 1996. Except those in the assigned risk pool, the rate shall be effective for the full term of the policy.

(b) The interim premium surcharge rate for the assigned risk pool shall be 13.6% on Standard Premium which shall apply to all workers' compensation and employers liability policies with an effective date between January 1, 1996 through June 30, 1996. In the assigned risk pool, the rate shall be effective for the full term of the policy.

(c) On or before May 15, 1996 and on or before August 15, 1996, Insurers shall remit to the Custodian of the Fund an amount equal to the stated Premium Surcharge, using the interim Premium Surcharge Rate provided in subsection (a) of this section, on all policies with an effective date during the first and second quarters of calendar year 1996, respectively.

(Adopted effective January 5, 1996)

Agency
Office of the State Treasurer

Subject
Second Injury Fund

Inclusive Sections
§§ 31-354-1—31-354-15

CONTENTS

Second Injury Fund

Sec. 31-354-1. Definitions

For purposes of Sections 31-354-1 to 31-354-34, inclusive of the Regulations of Connecticut State Agencies, the following definitions apply:

(1) "Acknowledgement of Prior Physical Condition" means a written notice from the employee to the employer in accordance with the provisions of section 31-325 of the General Statutes of any physical defect which imposes a further or unusual hazard upon the employer.

(2) "Agent" means a person who is authorized by a principal to act for or in place of that principal.

(3) "Appeal" means a request for a hearing before the Compensation Review Board to hear appeals from decisions made by commissioners pursuant to Chapter 568.

(4) "COLA" means the cost of living adjustment provided to claimants pursuant to Chapter 568.

(5) "Carrier" means the insurance company who represents the employer and pays compensation benefits to employees who have suffered a compensable injury.

(6) "Claimant" means the injured employee, or in the case of his or her death, his or her estate, and any class of dependents who may be entitled to benefits under Chapter 568.

(7) "Compensable Injury" means an injury for which a claimant is entitled to benefits under Chapter 568.

(8) "Commission" means the Workers' Compensation Commission.

(9) "Commissioner" means the compensation commissioner or other duly authorized person or a person who has jurisdiction in the matter referred to in the context.

(10) "Compensation" means benefits or payments mandated by the provisions of Chapter 568.

(11) "Compensation Rate" means the amount of weekly compensation that is equal to the percentage of average weekly earnings as of the date of the injury, calculated pursuant to the provisions of Chapter 568.

(12) "Compensation Review Board" means the chairman or his authorized representative and 2 commissioners appointed by him who sit on a review board and hear appeals from decisions made by compensation commissioners pursuant to section 31-280b of the General Statutes.

(13) "Concurrent Employment" means the employment of a claimant with more than one employer at time of injury.

(14) "Custodian of the Fund" means the treasurer of the state of Connecticut or his designee.

(15) "Debtor" means one who owes a debt to a creditor, who may be compelled to pay that debt to another pursuant to section 31-355a of the General Statutes.

(16) "Fund" means the Second Injury Fund.

(17) "Date of Liability" means the date when the Fund becomes statutorily responsible for a claim.

(18) "Date of Transfer" means the date the Fund's liability for a compensable injury is approved by a commissioner.

(19) "Dependent" means a member of the injured employee's family or next of kin who was dependent upon the earnings of the employee at the time of injury.

(20) "Employee" means any person as defined in subsection 9 of § 31-275 of the General Statutes.

(21) "Employer" means any entity as defined in subsection 10 of § 31-275 of the General Statutes.

(22) "Finding and Award" means a document issued by a commissioner determining the resolution of a disputed matter.

(23) "Formal Hearing" means a hearing before a commissioner where all evidence and arguments are recorded by a court reporter.

(24) "Group Program" means an insurance program providing health and accident benefits to claimants pursuant to subsection (f) of section 31-349 of the General Statutes.

(25) "Informal Hearing" means an informal discussion by parties in interest in an attempt to resolve a claim.

(26) "Lien" means a claim, encumbrance, or charge on property for the payment of a debt or the performance of an obligation.

(27) "Notice" means a notice in writing given to the custodian of the Fund, or his designee, as required by the following sections: 31-355, 31-349, 31-310, 31-307a, 31-306, and subsection (d) of 31-284b of the General Statutes.

(28) "Occupational Disease" means any disease peculiar to the occupation in which the employee was engaged in excess of the ordinary hazards of employment.

(29) "Order of Payment" means an award made by the commissioner.

(30) "Physician" means any person defined in section 20-1 of the General Statutes and licensed under the provisions of Chapters 370, 371, 372 and 373 of the General Statutes to practice in this state.

(31) "Previous Disability" means an employee's pre-existing condition, a permanent physicial impairment resulting from accidental injury, disease or congenital causes.

(32) "Stipulation" means a voluntary agreement between the parties where consideration is exchanged to relieve the respondent from any further obligations it may have to the claimant.

(33) "Respondent" means the employer and/or its insurance carrier, and/or the Fund.

(34) "Second Injury" means a compensable injury to an employee with a previous disability.

(35) "Transfer Agreement" means an agreement in writing to pass compensation liability from an employer or its insurer to the Fund in accordance with statutory requirements.

(36) "Trustee" means one who holds property in trust for the benefit of another, and who may be compelled to surrender that property to a creditor of that beneficiary in accordance with the provisions of section 31-355a of the General Statutes.

(37) "Voluntary Agreement" means a document negotiated between an employer and its

employee, establishing a consent to compensation. It is the basis for all compensation claims when there is no dispute that the claimant suffered a compensable injury.

(Effective July 21, 1994)

Sec. 31-354-2. Procedures under subsection (d) of § 31-284b of the general statutes

(a) **Use of Second Injury Fund**.

An employer who is required under subsection (a) of § 31-284b to provide health and life insurance shall continue and maintain group benefits, accident, health and life insurance coverage, or payments into an employee welfare fund. The Second Injury Fund is only responsible for reimbursement of premiums paid by the employer for such accident, health and life insurance coverage for claimants who are totally disabled and whose disability continues for 104 weeks.

(b) **Liability**

The Second Injury Fund reimbursement liability shall not start sooner than the end of 104 weeks. The Second Injury Fund may accept a late claim application notice from an employer which shall become effective 60 days after the date of notice.

(c) **Notice**

(1) Notice to the Fund shall include:

(A) A copy of the voluntary agreement or a copy of the finding and award.

(B) A copy of the insurance policy and evidence of premium payment;

(C) Copies of the medical records or a commissioner's order substantiating temporary total status; and

(D) Copies of the payment record evidencing 104 weeks of temporary total status.

(2) Reimbursement ceases on termination of temporary total status of the claimant.

(Effective July 21, 1994)

Sec. 31-354-3. Procedures under subsection (f) of § 31-301 of the general statutes

(a) **Condition Precedent to Payment**

As conditions precedent to payment of benefits by the fund, the claimant shall provide the following:

(1) A copy of the finding and award; and/or the Commissioner's order of payment.

(2) A copy of the petition for review or notice of appeal;

(3) The claimant's base compensation rate;

(4) An affidavit stating that claimant is not receiving benefits from another source; or

(5) Dependency benefit; and

(6) Copies of medical bills attached to the order.

(b) **Administration During the Appeal**

The order from the commissioner shall also include a statement that the insurance carrier or the self-insurer shall administer the file during the pendency of the appeal.

(c) **Conclusion of Appeal: Losing Party**

When the appeal is concluded, the losing party shall repay all the benefits the Fund

provided, and include an interest payment at the rate of 10% per annum. This interest shall start on the date of the first payment and shall continue until the obligation is paid in full. There shall be no compromise of any portion of this obligation. Upon the denial of benefits to the claimant, the commissioner who originally heard the case or his successor, shall conduct a hearing to determine the repayment schedule for the claimant.

(Effective July 21, 1994)

Sec. 31-354-4. Procedures under subparagraph (B) of subdivision (2) of subsection (a) of § 31-306 of the general statutes; COLA for dependents

(a) For employers to qualify for reimbursement from the Fund for COLAS added to widow and dependents benefits, the injury shall be prior to October 1, 1977. Notice to the Fund shall include the date of injury or death, and a voluntary agreement or a finding and award.

(b) If the date of injury is on or after October 1, 1977, the employer remains liable for the Cost of Living Adjustments, and is not entitled to reimbursement from the Fund.

(Effective July 21, 1994)

Sec. 31-354-5. Procedures under subsection (b) of § 31-307a of the general statutes; COLA for employees

After the notice the Second Injury Fund reimburses insurance carriers and employers for COLAS paid to claimants who are totally disabled from an injury which occurred prior to October 1, 1969.

(Effective July 21, 1994)

Sec. 31-354-6. Benefits under § 31-308a of the general statutes

The Fund shall require a written order by the commissioner before it may make payments of benefits pursuant to Sec 31-308a of the General Statutes. The claimant is only entitled to these benefits up to the base compensation rate established at the time of the injury.

(Effective July 21, 1994)

Sec. 31-354-7. Procedures under § 31-310 of the general statutes

(a) **Concurrent Employment**

An employee may be eligible for concurrent employment benefits if that employee falls within the definition of an employee as defined in subparagraphs (A) and (B) of subdivision (9) of section 31-275 of the General Statutes. An employer may be a concurrent employer for purposes of this section if that employer falls within the definition of an employer as defined in subparagraphs (A), (B), (C), and (D) of subdivision (10) of section 31-275 of the General Statutes.

(b) **Eligibility**

A claimant is eligible for concurrent employment benefits if the claimant has two (2) or more jobs at the time of his compensable injury. The Fund shall reimburse an employer for

that part of the compensation rate represented by the earnings from places of employment other than where the employee sustained the injury.

(c) **Carrier Reimbursement**

The carrier shall pay the full compensation rate and then seek reimbursement from the Fund. The reimbursement does not include medical bills.

(d) **Notice**

(1) Notice to the Fund for reimbursement shall contain the following documentation:

(A) The worker's compensation district;

(B) The voluntary agreement approved and signed by a commissioner or finding and award;

(C) Form 44-68 approved and signed by a commissioner;

(D) Statement of earnings; including copies of documents showing claimant's earnings with all employers during the § 31-310 time period.

(E) Copies of claimant's benefits checks; or an accounting from the employer or insurance carrier.

(F) Medical reports;

(G) Claimant's status: permanent total, temporary total, permanent partial, temporary partial;

(H) Number of weeks of disability paid for each disability status; and

(I) Amount requested for reimbursement.

(2) Send all correspondence to:

Second Injury Fund
Accounting Department
P.O. Box 668
10 Griffin Road North
Windsor, CT 06095-0668

(Effective July 21, 1994)

Sec. 31-354-8. Procedures under § 31-325 of the general statutes

(a) **Acknowledgement of Physical Condition**

A worker with a prior work injury or physical impairment may execute an acknowledgement of his physical defect which shall be approved by the compensation commissioner in the appropriate district. The language shall be very specific as to the condition acknowledged.

(b) **Transfer of Liability**

(1) In the event of an injury, a proper acknowledgement allows the employer to transfer the liability of the compensable injury to the Fund from the first day of the disability.

(2) Employees executing an acknowledgement shall not be prejudiced in the event of an injury; employers shall provide the requisite benefits until there is an agreement with the Fund.

(c) **Notice**

Notice to the Fund shall contain:

(1) A copy of the acknowledgement;

(2) A copy of an approved voluntary agreement; or finding and award;

(3) Supporting medical records; and

(4) Claimant's statement describing the incident.

(Effective July 21, 1994)

Sec. 31-354-9. Procedures under § 31-349 of the general statutes

(a) **Compensation for Second Liability**

(1) If an employee with a permanent physical impairment incurs a second compensable injury either by accident or by disease, and both conditions result in a permanent disability which is materially and substantially greater than the disability which would have resulted from the second injury alone, he shall receive compensation for the entire amount of disability.

(2) As a condition precedent to the liability of the Second Injury Fund, the employer or his insurance carrier shall, after the expiration of 52 weeks of disability and ninety days prior to the expiration of the 104 week period of disability notify the custodian of the Second Injury Fund of this pending case.

(3) With timely notice, i.e. notice to the custodian of the Second Injury Fund of the pending case 90 days prior to the expiration of the 104 week period of disability, an employer or compensation carrier may transfer its liability to the Second Injury Fund.

(b) **Notice**

(1) Notice to the Fund shall:

(A) Be sent to the custodian of the fund or his designee;

(B) Be accompanied by a voluntary agreement or finding and award. If there is no voluntary agreement or finding and award, the claim may be rejected unless it is being contested as to compensability. The employer or insurance carrier shall provide the Fund with a copy of its notice of contest and shall request that the Fund be made a party of interest in the contested claim.

(C) Be accompanied by copies of all supporting medical reports; and

(D) Contain a statement outlining the claim, type and amount of benefits paid to date or other proof of disability.

(2) If notice is untimely or a voluntary agreement is not approved within the statutory time period, the Fund may reject the claim.

(c) **Transfer Agreement**

(1) If the claim is voluntarily accepted by the Fund, the employer or its carrier shall prepare a transfer agreement.

(2) Clearly stated within the body of the transfer agreement shall be:

(A) An accounting and calculation of benefits paid toward the 104 weeks and the type of benefits paid; temporary total, temporary partial, and/or permanent partial disability.

(B) The claimant's present disability status and copies of all medical data substantiating such status.

(C) A reimbursement request for all compensation benefits paid and medical costs incurred subsequent to the date of fund liability.

(3) If more than one body part is injured, the Fund shall only accept transfer of the body parts statutorily eligible for transfer. Each body part may transfer upon payment of 104 weeks of disability attributable to that body part.

(4) The claimant's signature may be required by the fund.

(d) **Claimant's Process and Procedures**

(1) A change of address shall be forwarded to the Fund immediately.

(2) A change of the authorized attending physician requires prior approval from the Fund or the commissioner.

(3) A medical report shall be sent to the Fund from your authorized attending physician i.e. after each visit.

(4) Prior to the scheduling of any non-emergency surgery, a second opinion from another physician may be required. Upon notification, the Fund may schedule the evaluation appointment.

(5) All medical and pharmaceutical bills forwarded to the Fund for payment shall be itemized originals; "balance forward" bills are not acceptable.

(6) Changes in circumstances affecting a claim, including but not limited to the following, shall be reported to the Fund:

(A) Marital Status - divorce; living apart; spousal death;

(B) Dependency - attaining majority; emancipation; student status;

(C) Legal Representation - a change in attorneys; a termination of client relationship;

(D) Medical Treatment - a change in attending physician; medical referrals;

(E) Benefit Payments - errors; overpayment; and

(F) Employment - date returned to work.

(7) Failure to notify the Fund in writing of any changes in circumstance could result in the discontinuation of benefits and possible litigation.

(8) send all correspondence to:

Second Injury Fund
Claims Department
P.O. Box 668
10 Griffin Road North
Windsor, CT 06095-0668

(e) **Obligations of Authorized Attending Physicians**

Such regular progress reports as may be required by the Second Injury Fund shall be sent to the Fund by the attending physician.

(f) **Transfer of Liability under Subsection (f) of Section 31-349 of the General Statutes**

(1) No hearing, informal or formal, shall be assigned or held for the purpose of transferring liability to the Second Injury Fund under the provisions of subsection (f) of Section 31-349 of the General Statutes, unless and until the claimant or his representative has certified in writing to the Second Injury Fund the following information:

(A) The date the claimant's employer removed all or substantially all of its industrial or commercial operations to a location outside the state of Connecticut, or the date the claimant's employer permanently shut down all of its operations within a business facility located in the state, and thereafter failed to comply with the provisions of section 31-284b of the General Statutes;

(B) The name and address of the claimant; the claimant's employer; the claimant's compensation carrier; and the claimant's group health carrier;

(C) A copy of the voluntary agreement or the finding and award approved and signed by a compensation commissioner;

(D) A statement indicating that the claimant is currently receiving compensation benefits and shall notify the Fund every 30 days that he/she is still receiving compensation benefits; and

(E) A description of the health plan in force on the date of injury, including whether or not a contribution was made by the claimant to the cost of premium.

(2) **Liability**

The Fund's liability for the costs of the coverage shall begin 15 days after the custodian is so notified and shall continue so long as the individual receives compensation pursuant to this chapter; and enrollment into a group program shall be deemed to be equivalent coverage.

(3) **Notice**

The Fund shall not be liable for any costs incurred (1) prior to the date the notice is received or (2) during the 15 days after the notice is received if the custodian determines during that period that the individual is ineligible. Failure to comply with any of the foregoing provisions during the fifteen day period after the notice has been received by the Fund may render the claimant ineligible.

(4) **Jurisdiction**

A commissioner having jurisdiction may, when in the opinion of that commissioner sufficient cause exists, assign for an informal or formal hearing a case involving a request of transfer of liability of the Fund pursuant to subsection (f) of section 31-349 of the General Statutes.

(Effective July 21, 1994)

Sec. 31-354-10. Voluntary agreements and stipulations under § 31-353 of the general statutes

(a) If the treasurer and an injured employee, or his legal representative reach a voluntary agreement in regard to compensation payable under section 31-349 of the General Statutes such agreement shall be submitted in writing to the commissioner for his approval and,

upon approval, shall remain in effect until otherwise ordered by the commissioner.

(b) The treasurer may make final payment by stipulation in any matter concerning the fund, subject to the approval of the commissioner, whenever it is for the best interests of the injured employee.

(Effective July 21, 1994)

Sec. 31-354-11. Civil action for reimbursement to the fund under § 31-355 of the general statutes

When a finding and award of compensation has been made against an uninsured employer who fails to pay it, that compensation shall be paid from the Second Injury Fund, and if the disability continues and there are further claims, another formal hearing with a commissioner's written order or award is required as a condition precedent before the Fund may make any future payments.

(Effective July 21, 1994)

Sec. 31-354-12. Payment to claimant under § 31-355 of the general statutes

Payment of compensation shall be paid from the Fund provided:

(a) A formal hearing is held and the Second Injury Fund, the Attorney General's Office, and Workers' Compensation Department, were noticed to attend.

(b) A finding and award is granted against the employer after notice to the employer.

(c) Ten days have passed from the date of notice of the award to the employer and the claimant has not received payment and the employer has not instituted an appeal.

(d) The claimant requests and is granted a supplemental order of payment against the Fund.

(Effective July 21, 1994)

Sec. 31-354-13. Employer liability under § 31-355 of the general statutes

(a) The employer shall be liable for all such payments made out of the Fund together with all attorney's fees; the employer's assets shall be attached until the Fund is reimbursed.

(b) A proper and sufficient plan for payment to the Fund may be in full, quarterly or monthly payments; payments other than in full shall require a promissory note reciting the amount, terms and conditions of payment.

(c) If neither reimbursement nor a payment plan has been implemented within 90 days of any such payment from the Fund, the attorney general may bring a civil action to recover all amounts paid by the Fund pursuant to such award, plus double damages, reasonable attorney's fees and costs. Any amount paid by the employer after the filing of said action, but prior to its completion, shall be subject to an interest charge of 18% per annum, calculated from the date of original payment from the Fund.

(Effective July 21, 1994)

Sec. 31-354-14. Collection of monies owed fund under § 31-355 of the general statutes

Whenever the Second Injury Fund is required pursuant to section 31-355 of the General Statutes or subsection (f) of section 31-349 of the General Statutes to pay benefits or compensation mandated by the provisions of the Workers' Compensation Act Chapter 568, for any employer or insurer who fails or is unable to make such payments, the amount so paid by the Fund shall be collected by any means provided by law for the collection of any tax due the state of Connecticut including any means provided by section 12-35 of the General Statutes.

(Effective July 21, 1994)

Sec. 31-354-15. Certificate of lien under § 31-355a of the general statutes

Any such amount owed to the Second Injury Fund pursuant to section 31-355 of the General Statutes or subsection (c) of section 31-349 of the General Statutes shall be a lien from the due date until discharged by payment against all property of the employer or insurer within the state including debts owed to the employer or insurer, except property exempt from execution.

(a) **Filing**

A certificate of lien without specifically describing such personal or real property, signed by the state treasurer, may be filed in the office of the clerk in any town in which such real property is situated; or in the case of personal property may be filed in the office of the secretary of state. Such lien shall be effective from the date on which it is recorded.

(b) **Concealed Property, Debtor**

When the property to be liened is concealed in the hands of the agent or trustee of the employer, or is a debt due to the employer, the certificate of lien may be filed by leaving a copy thereof, by registered or certified mail with such agent, trustee or debtor. From the time of receipt of such lien, all property of the employer or insurer in the hands of such agent or trustee, and any debt due from such debtor shall be secured to pay the amount of such lien. The state treasurer may require such agent, trustee or debtor to disclose under oath within 10 days whether he had the property of the employer or insurer, or is indebted to him. If such agent, trustee or debtor fails to disclose, or having disclosed fails to turn over the property or pay to the state treasurer the amount of indebtedness the state treasurer may proceed against him by scire facias against garnishee. The payment by such agent, trustee or debtor to the state treasurer shall discharge him of his liability to the employer or insurer to the extent thereof.

(c) **Foreclosure of Lien**

Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the Superior Court for the Judicial District in which the subject property is situated.

(d) **Discharge of Lien**

When any such amount with respect to which a lien has been recorded under the

provisions of section 31-355a of the General Statutes has been satisfied, the state treasurer upon the request of any interested party, shall issue a certificate discharging such lien.

(Effective July 21, 1994)

Agency
Department of Labor/Occupational Safety and Health

Subject
OCCUPATIONAL SAFETY AND HEALTH

Inclusive Sections
§§ 31-371-1—31-371-20

CONTENTS

Inspections, Citations and Proposed Penalties

OCCUPATIONAL SAFETY AND HEALTH

Inspections, Citations and Proposed Penalties

Sec. 31-371-1. Purpose and scope

The Connecticut Occupational Safety and Health Act of 1973 (Public Act No. 73-379) requires that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct. The Act authorizes the Department of Labor to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act under section 31-383 authorizes the Commissioner of the Labor Department to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this part is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Act. In situations where this part sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Commissioner or his designee determines that an alternative course of action would better serve the objectives of the Act.

(Effective September 11, 1974)

Sec. 31-371-2. Posting of notice: Availability of the act, regulations and applicable standards

(a) (1) Each employer shall post and keep posted a notice or notices to be furnished by the Occupational Safety and Health Division of the Connecticut Labor Department, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(2) Where the state has an approved poster informing employees of their projections and obligations, such poster, when posted by employers covered by the state plan, shall constitute compliance with the posting requirements of section 31-374(c) (1) of the act.

(3) Reproductions or facsimiles of such state posters shall constitute compliance with

the posting requirements of section 31-374(c) (1) of the act where such reproductions or facsimiles are at least 8-1/2 inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office). Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Division of the Connecticut Labor Department. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(c) Copies of the Act, all regulations and all applicable standards will be available at the office of the Occupational Safety and Health Division of the Connecticut Labor Department. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of section 31-382 of the Act.

(Effective October 5, 1979)

Sec. 31-371-3. Authority for inspection

(a) Occupational Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, work place or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein: to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and related regulations, and other records which are directly related to the purpose of the inspection.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, Occupational Safety and Health Officers shall have obtained the appropriate security clearance.

(Effective September 11, 1974)

Sec. 31-371-4. Objection to inspection

(a) Upon a refusal to permit an Occupational Safety and Health Officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner operator, agent, or employee, in accordance with section 31-371-3, or to permit a representative of employees to accompany the Occupational Safety and Health Officer during the physical inspection of any work place, the Occupational Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, material, records, or interviews concerning which no objection is raised. The compliance safety and health officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefor to the director. The director shall consult with the attorney general who shall take appropriate action, including compulsory process if necessary.

(b) Compulsory process may be sought in advance of an inspection or investigation if in the judgment of the director and the attorney general, circumstances exist which make preinspection process desirable or necessary.

(c) With the approval of the commissioner and the attorney general, compulsory process may also be obtained by the director or his designee.

(d) For the purpose of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

(Effective October 5, 1979)

Sec. 31-371-5. Entry not a waiver

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Occupational Safety and Health Officers are not authorized to grant any such waiver.

(Effective September 11, 1974)

Sec. 31-371-6. Advance notice of inspections

(a) Advance notice of inspections may not be given, except in the following situations: (1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible; (2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection; (3) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and (4) in other

circumstances where the Occupational Safety and Health Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in sub-section (a) of this section, advance notice of inspections may be given only if authorized by the Director of Occupational Safety and Health, except that in cases of apparent imminent danger, advance notice may be given by the Occupational Safety or Health Officer without such authorization if the Director is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. Upon the request of the employer, the Occupational Safety or Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Occupational Safety or Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this subsection promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Occupational Safety or Health Officer promptly to inform such representative of the inspection, may be subject to citation and penalty under section 31-382 (c) of the Act. Advance notice in any of the situations described in subsection (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be concluded, except in apparent imminent danger situations and in other unusual circumstances.

(e) The Act provides in section 31-382 (f) that any person who gives advance notice of any inspection to be conducted under the Act, without authority from the Commissioner or his designees, shall be fined not more than one thousand dollars or imprisoned not more than six months, or both.

(Effective September 11, 1974)

Sec. 31-371-7. Conduct of inspection

(a) Subject to the provisions of section 31-374 inspections shall take place at such times and in such places of employment as the Commissioner may direct. At the beginning of an inspection, Occupational Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified which they wish to review.

(b) Occupational Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.

(c) In taking photographs and samples, Occupational Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Occupational Safety and Health Officers shall comply

with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the Occupational Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Occupational Safety and Health Officer any pertinent information regarding conditions in the workplace.

(f) Inspections shall be conducted in accordance with all other regulations.

(Effective September 11, 1974)

Sec. 31-371-8. Representatives of employers and employees

(a) Occupational Safety and Health Officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Occupational Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. An Occupational Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Occupational Safety and Health Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Occupational Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the Occupational Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Occupational Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Occupational Safety and Health Officer during the inspection.

(d) Occupational Safety and Health Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of subsection (c) of section 31-371-9. With regard to information classified by an agency of the U. S. Government in the interest of national security, only persons authorized to have access to such information may accompany an Occupational

Safety and Health Officer in areas containing such information.

(Effective September 11, 1974)

Sec. 31-371-9. Trade secrets

(a) Section 31-381 of the Act provides: "All information reported to or otherwise obtained by the Commissioner or his representatives in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret shall be considered confidential, provided such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceedings the Commissioner, the Review Commission or the Court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets."

(b) At the commencement of an inspection the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the inspecting officer has no clear reason to question such identification, information obtained in such areas including all negatives and prints of photographs and environmental samples shall be labelled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of section 31-381 of the Act.

(c) Upon the request of an employer, any authorized representative of employees in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the inspector shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

(Effective September 11, 1974)

Sec. 31-371-10. Consultation with employees

Occupational Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Occupational Safety and Health Officer.

(Effective September 11, 1974)

Sec. 31-371-11. Complaints by employees

(a) Any employee or representative of employees who believes that there is a violation of an occupational safety or health standard or that there is an imminent danger of physical harm may request an inspection by giving notice to the Commissioner or his authorized representative of such violation or danger. Any such notice shall be reduced to writing and shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or the representative of employees. A copy of such notice shall be provided the employer or his agent no later than the time of the inspection, provided, upon request of the person giving such notice, his name and the names of individual employees referred

to therein shall not appear in such copy or on any record published, released or made available by the Labor Department.

(b) If upon receipt of such notification the Commissioner determines there are reasonable grounds to believe that such violation or danger exists, he shall make an inspection in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. Such inspection may be limited to the alleged violation or danger.

(c) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Commissioner or any representative of the Commissioner responsible for conducting the inspection, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (a) of this section.

(d) Subsection (a) of section 31-379 of the Connecticut General Statutes provides: "No person shall discharge, discipline, penalize or in any manner discriminate against any employee (1) because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, (2) because such employee has testified or is about to testify in any such proceeding, or (3) because of the exercise by such employee on behalf of such employee or others of any right afforded by this chapter."

(Effective September 11, 1974; Amended December 6, 2001)

Sec. 31-371-12. Inspection not warranted; informal review

(a) If the Director of Occupational Safety and Health determines that an inspection is not warranted because there are no reasonable grounds to believe that violation or danger exists with respect to a complaint under section 31-371-11, he shall notify the employer and the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Commissioner and, at the same time provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Commissioner, at his discretion may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Commissioner shall affirm, modify, or reverse the previous determination and furnish the complaining party and the employer a written notification of his decision and the reasons therefor. The decision of the Commissioner shall be final and not subject to further review. Such notification shall not preclude future enforcement action if conditions change.

(b) If the Director of Occupational Safety and Health determines that an inspection is not warranted because the requirements of section 31-371-11 have not been met, he shall notify the employer and the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of section 31-371-11 and it shall not preclude future enforcement action if

conditions change.

(Effective September 11, 1974)

Sec. 31-371-13. Imminent danger

Whenever and as soon as an Occupational Safety and Health Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of section 31-380 of the Act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Occupational Safety and Health Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

(Effective September 11, 1974)

Sec. 31-371-14. Citations; notices of de minimis violations

(a) The Commissioner shall review the inspection reports of the Occupational Safety and Health Officers. If on the basis of the report the Commissioner believes that the employer has violated a requirement of section 31-370 of the Act, of any standard, rule or order promulgated pursuant to section 31-372 of the Act, or of any substantive rule published by the Occupational Safety and Health Division, he shall, if appropriate, consult with the Occupational Safety and Health Division Attorney, and he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the Occupational Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provisions of the Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(c) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection or a notification of violation under section 31-371-11, a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the Commissioner determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection or a

notification of violation under section 31-371-11, the informal review procedures prescribed in section 31-371-12 shall be applicable. After considering all views presented, the Commissioner shall affirm the determination, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The Commissioner shall furnish the complaining party and the employer with written notification of his determination and the reason therefor. The determination of the Commissioner shall be final and not subject to review.

(e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Review Commission.

(Effective September 11, 1974)

Sec. 31-371-14a. Petitions for modification of abatement date

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with subsection (c) (1) of this section and a certification of the date upon which such posting and service was made.

(c) A petition for modification of abatement date shall be filed with the Director of the Occupational Safety and Health Division of the Connecticut Labor Department who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(2) Affected employees or their representatives may file an objection in writing to such

petition with the aforesaid Director. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

(3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 31-377 (a) and (c) of the Act.

(4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted or served pursuant to paragraphs (c) (1) and (2) of this section by the employer, and then the Commissioner shall respond within the next following ten (10) days. Failure to respond within ten (10) days shall be interpreted as an approval of the petition.

(d) Where any petition is objected to by the Commissioner or affected employees, the petition, citation, and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c) (4) of this section.

(Effective December 13, 1976)

Sec. 31-371-15. Proposed penalties

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Commissioner shall notify the employer by certified mail or by personal service by the Occupational Safety and Health Officer of the proposed penalty under section 31-382 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Commissioner in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Commissioner shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 31-382 of the Act.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Occupational Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

(Effective September 11, 1974)

Sec. 31-371-16. Posting of citations

(a) Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employers operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable. by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect his posting responsibility unless and until the Review Commission issues a final order vacating the citation.

(c) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of subsections (a) and (b) of this section shall be subject to citation and penalty in accordance with the provisions of section 31-382 of the Act.

(Effective September 11, 1974)

Sec. 31-371-17. Employer and employee contests before the review commission

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under Section 31-377 (a) of the Act, notify the Commissioner in writing that he intends to contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Commissioner shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commissioner.

(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under section 31-377 (c) of the Act, file a written notice with the Commissioner alleging that the period of time fixed, in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Commissioner shall immediately transmit such notice to the Review

Commission in accordance with the rules of procedure prescribed by the Commission.

(Effective September 11, 1974)

Sec. 31-371-18. Failure to correct a violation for which a citation has been issued

(a) If an inspection discloses that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction, the Commissioner shall notify the employer by certified mail or by personal service by the Occupational Safety and Health Officer of such failure and of the additional penalty proposed under section 31-382 (d) of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Review Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

(b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under section 31-377 (b) of the Act, notify the Commissioner in writing that he intends to contest such notification or proposed additional penalty before the Review Commission. Such notice of intention to contest shall be filed within 15 working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Commissioner shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(c) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notification, the employer notifies the Commissioner in writing that he intends to contest the notification or the proposed additional penalty before the Review Commission.

(Effective September 11, 1974)

Sec. 31-371-19. Informal conferences

At the request of an affected employer, employee, or representative of employees, the Commissioner may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the Review Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Commissioner. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Commissioner. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 15 working-day period for filing a notice of intention to contest as prescribed in section

31-371-17.

(Effective September 11, 1974)

Sec. 31-371-20. Definitions

(a) "Act" means the Connecticut Occupational Safety and Health Act of 1973 (Public Act No. 73-379).

(b) The definitions contained in section 31-367 of the Act shall be applicable to such terms when used in the regulations.

(c) "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays or State holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

(d) "Occupational Safety or Health Officer or Inspector" means a person authorized by the Commissioner of the Connecticut Department of Labor, to conduct inspections.

(e) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint, any reinspection, followup inspection, accident investigation or other inspection conducted under section 31-374 of the Act.

(Effective September 11, 1974)

Agency
Department of Labor

Subject
OCCUPATIONAL SAFETY AND HEALTH

Inclusive Sections
§§ 31-372-1—31-372-108-1928

CONTENTS

Limitations, Variations, Tolerances, and Exemptions

Standards

OCCUPATIONAL SAFETY AND HEALTH

Limitations, Variations, Tolerances, and Exemptions

Sec. 31-372-1. Purposes and scope

These regulations specify the rules of practice for seeking limitations, variations, tolerances, and exemptions from the Occupational Safety and Health Standards of Connecticut. These rules are intended to secure a prompt and just conclusion to the proceedings relating to petitions seeking such relief.

(Effective September 11, 1974)

Sec. 31-372-2. Definitions

As used in this Article:

(a) "Act" means the Connecticut Occupational Safety and Health Act of 1973.

(b) "Affected Employer" or "Affected Employee" means any employer or employee who would be affected by the grant or denial of any petition.

(c) "Commissioner" means the Commissioner of the Connecticut State Department of Labor.

(d) "Employee" means a person employed or permitted to work by a corporation, partnership, company, or individual.

(e) "Employer" means the State of Connecticut or its political subdivisions.

(f) "Owner", "Lessee", "Agent", or "Manager of a building" means one or more individuals, partnerships, associations, corporations, business trusts, or legal representatives who control parts or features of a building which are not under the control of a tenant employer.

(g) "Party" means any person, individual, corporation, partnership, association, and the State of Connecticut or any of its political subdivisions having an interest or right to participate in hearings related to these regulations.

(h) "Person" means any individual, corporation, partnership, association, and the State of Connecticut, or any of its political subdivisions.

(Effective October 5, 1979)

Sec. 31-372-3. Petitions for amendments to this part

Any person may at any time petition the Commissioner in writing to revise, amend, or revoke any provisions of this part. The petition should set forth either the terms or the substance of the rule desired, with concise statement of the reasons therefor and the effects thereof.

(Effective September 11, 1974)

Sec. 31-372-4. Amendments to this part

The Commissioner may at any time revise, amend, or revoke any provisions of this part,

on his own motion or upon the written petition of any person.

(Effective September 11, 1974)

Sec. 31-372-5. Effect of variances

All variances granted pursuant to this part shall have only future effect. In his discretion, the Commissioner may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Commission or appropriate state review authority until the completion of such proceeding.

(Effective October 5, 1979)

Sec. 31-372-6. Public notice of a granted variance, limitation, variation, tolerance, or exemption

Every final action granting a variance, limitation, variation, tolerance, or exemption, under this part shall be published in the Connecticut Law Journal. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

(Effective September 11, 1974)

Sec. 31-372-7. Form of documents; subscriptions; copies

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings under this part. However, any applications and other papers shall be clearly legible. An original and six copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies, or printed or processed copies are acceptable copies.

(b) Each application or other paper which is filed in proceedings under this part shall be subscribed by the person filing the same, or by his attorney or other authorized representative.

(Effective September 11, 1974)

Sec. 31-372-8—31-372-9. Reserved

Sec. 31-372-10. Variances, and other relief under section 31-372 (a) and (e)

(a) **Application for variances.** Any owner, employer, or class of employers desiring a variance from a standard or a portion thereof authorized by Section 31-372 of the Connecticut Occupational Safety and Health Act may file a written application containing the information specified in paragraph (b) of this section with the Commissioner.

(b) **Contents.** An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a

variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific date where appropriate to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to comply with the standard and what steps he has taken and will take with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of facts the applicant would show to establish that, (i) the applicant is unable to comply with a standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date; (ii) he is taking all available steps to safeguard his employees against the hazards covered by this standard; and (iii) he has an effective program for coming into compliance with the standard as soon as possible;

(8) Any request for a hearing as provided in this regulation;

(9) A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how the affected employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) **Application for interim order.**

(1) An application may be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Commissioner may rule ex parte upon the application.

(2) Notice of denial of application. If the application for an interim order is denied by the Commissioner the applicant shall be advised in writing of the grounds for this denial.

(3) Notice of approval of interim order. If an interim order is granted, the applicant and other interested parties will be served a copy of the order and the contents of the order shall be published in the Connecticut Law Journal. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees in the same manner as he is required to do in case of application for variance.

(Effective September 11, 1974)

Sec. 31-372-11. Variances and other relief under section 31-372 (g)

(a) **Application for variance.** Any owner, employer or class of employers desiring a

variance authorized by Section 31-372 (g) of the Act may file a written application containing the following information with the Commissioner of Labor.

(b) **Contents.**

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) A certification that the applicant has informed his employees of the application by (i) giving a copy thereof to their authorized representative; (ii) posting a statement giving a summary of the application specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (iii) by other appropriate means.

(6) Any request for a hearing as provided in this part; and

(7) A description of how employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) **Interim order.**

(1) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Commissioner may rule ex parte upon the application.

(2) Notice of denial of application. If an application filed for an interim order for a variance, as described in the preceding paragraph, is denied, the applicant shall be given prompt notice of the denial which shall include, or be accompanied by, a brief statement of grounds therefor.

(3) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the Connecticut Law Journal. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

(Effective September 11, 1974)

Sec. 31-372-12. Limitations, variations, tolerances or exemptions

(a) **Application.** Any person or class of persons desiring a limitation, variation, tolerance or exemption authorized by Section 31-372 of the Connecticut Occupational Safety and Health Act as he may find necessary and proper to avoid serious impairment of the national defense may file an application containing the information specified below.

(b) **Contents.**

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the provision of the Act to or from which the applicant seeks a limitation, variation, tolerance or exemption.

(4) A representation showing that the limitation, variation, tolerance or exemption sought is necessary and proper to avoid serious impairment of the national defense;

(5) Any request for a hearing as provided in this part; and

(6) A description of how employees have been informed of the application and of their right to petition the Commissioner for a hearing.

(c) **Interim order.**

(1) An application may also be made for an interim order to be effective until a decision is rendered on the application for the limitation, variation, tolerance or exemption filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Commissioner may rule ex parte upon the application.

(2) Notice of denial of application. If an application filed, pursuant to an application for an interim order is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied, by a brief statement of the grounds therefor.

(3) Notice of grant of an interim order. If the interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in the Connecticut Law Journal. It shall be a condition of the order that the affected employer shall give notice thereof to the affected employees by the same means to be used to inform them of an application of variance.

(Effective September 11, 1974)

Sec. 31-372-13. Modification, revocation and renewal of rules or orders

(a) **Modification or revocation.**

(1) An affected owner, employer or an affected employee may apply in writing to the Commissioner for a modification or revocation of a rule or order issued under Section 31-372 of the Act.

The application shall contain:

(i) The name and address of the applicant.

(ii) A description of the relief which is sought;

(iii) A statement setting forth with particularity the grounds for relief;

(iv) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by: (a) Giving a copy thereof to their authorized representative; (b) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and (c) Other appropriate means.

(v) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(vi) Any request for a hearing as provided in this part.

(2) The Commissioner may on his own motion proceed to modify or revoke a rule or order issued in relation to the preceding sections of this article. In such event, the Commissioner shall cause to be published in the Connecticut Law Journal a notice of his intention, affording interested persons an opportunity to submit written data, view, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of: (i) How the proposed modification or revocation would affect the requesting party; and (ii) What the requesting party would seek to show on the subjects or issues involved.

(b) **Renewal.** Any final rule or order issued pursuant to Sections 31-369, 31-370, 31-371 of this part may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

(Effective September 11, 1974)

Sec. 31-372-14. Actions on applications

(a) **Defective applications.**

(1) If an application filed pursuant to this article does not conform to the applicable section, the Commissioner may deny the application.

(2) Prompt notice of the denial of an application shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by a brief statement of the grounds for denial.

(4) A denial of an application pursuant to this article shall be without prejudice to the filing of another application.

(b) **Adequate applications.**

(1) If an application has not been denied pursuant to paragraph (a) of this section, the Commissioner shall cause to be published in the Connecticut Law Journal a notice of the filing of the application

(2) A notice of the filing of an application shall include: (i) the terms or an accurate summary of the application; (ii) a reference to the section of the Act under which the application has been filed; (iii) an invitation to interested persons to submit within a stated period of time written data, views or arguments regarding the application; and (iv) information to affected employers and employees of any right to request a hearing on the application.

(3) A copy of each final decision of the commissioner with respect to an application filed under sections 31-372-10, 31-372-11, or 31-372-13 shall be furnished, within 10 days of issuance.

(Effective October 5, 1979)

Sec. 31-372-15. Request for hearings on applications

(a) **Requests for hearing.** Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Commissioner a request for a hearing on the application.

(b) **Contents of a request for a hearing.** A request for a hearing on an application shall include:

(1) A statement of facts indicating how the employer or employee would be affected by the relief sought;

(2) Specification of the statement or representation in the application which is denied, and a summary of evidence which would support a denial; and

(3) Any views or arguments on any issues of fact or law presented.

(Effective October 5, 1979)

Sec. 31-372-16. Consolidation of proceedings

The Commissioner on his own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

(Effective September 11, 1974)

Sec. 31-372-17—31-372-19. Reserved

Sec. 31-372-20. Notice of hearing

(a) Upon request for a hearing the Commissioner shall serve, or cause to be served, a reasonable notice of hearing.

(b) A notice of hearing shall include:

1. The time, place, and nature of the hearing.
2. The legal authority under which the hearing is to be held.
3. A specification of issues of fact and law.
4. A designation of a hearing examiner to preside over the hearing.

(c) A copy of a notice of hearing served pursuant to paragraph (a) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this part.

(Effective September 11, 1974)

Sec. 31-372-21. Manner of service

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

(Effective September 11, 1974)

Sec. 31-372-22. Hearing examiners; powers and duties

(a) **Powers.** A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

1. To administer oaths and affirmations.
2. To rule upon offers of proof and receive relevant evidence.
3. To provide for discovery and determine its scope.
4. To regulate the course of the hearing and the conduct of the parties and their counsel therein.
5. To consider and rule upon procedural requests.
6. To hold conferences for the settlement or simplification of the issues by consent of the parties.
7. To make, or to cause to be made, an inspection of the employment or place of employment involved.
8. To make decisions in accordance with the Act, this part, and the Administrative Procedure Act.
9. To take any other appropriate action authorized by the Act, this part, or the Administrative Procedure Act.

(b) **Private consultation.** Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party or any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) **Disqualification.**

1. When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.
2. Any party who deems a hearing examiner for any reason to be disqualified to preside, over a particular hearing, may file with the Chief Hearing Examiner a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(d) **Contumacious conduct.**

1. Contumacious conduct at any hearing before the hearing examiner shall be ground for exclusion from the hearing.
2. If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) **Referral to federal rules and civil procedure.** On any procedural question regulated by this part, the Act, or the Administrative Procedure Act, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

(Effective September 11, 1974)

Sec. 31-372-23. Prehearing conference

(a) Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

1. Simplification of the issues;

2. Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

3. Stipulations, admissions of fact, and of contents and authenticity of documents;

4. Limitation of the number of parties and of expert witnesses; and

5. Such other matters as may tend to expedite the disposition of the proceeding and to assure a just conclusion thereof.

(b) **Record of conference.** The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

(Effective September 11, 1974)

Sec. 31-372-24. Consent findings and rules or orders

(a) At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;

(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner and the Commissioner; and

(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) On or before the expiration of the time granted for negotiations, the parties or their counsel may;

(1) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

(Effective September 11, 1974)

Sec. 31-372-25. Depositions

(a) **Discovery.**

(1) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(2) Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth:

(i) The reasons why such deposition should be taken;

(ii) The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(iii) The name and address of each witness; and

(iv) The subject matter concerning which each witness is expected to testify.

(3) Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(4) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(b) Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

(Effective September 11, 1974)

Sec. 31-372-26. Hearings

(a) Except as may be ordered otherwise by the presiding hearing examiner, the party applicant for relief shall proceed first at a hearing.

(b) The party applicant shall have the burden of proof.

(c) (1) A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding hearing examiner shall exclude evidence which is irrelevant, immaterial or unduly repetitious.

(2) The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(3) If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(4) Formal exception to an adverse ruling is not required.

(d) Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert:

Provided, that the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(e) Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

(Effective September 11, 1974)

Sec. 31-372-27. Decisions of hearing examiners

(a) Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the presiding hearing examiner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in Section 31-372-28. The decision of the hearing examiner shall include:

(1) A statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and

(2) The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts

officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

(Effective September 11, 1974)

Sec. 31-372-28. Exceptions

Within 20 days after service of a decision of a presiding hearing examiner, any party may file with the hearing examiner written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the hearing examiner shall fix a time for filing any objections to the exceptions and any supporting reasons.

(Effective September 11, 1974)

Sec. 31-372-29. Transmission of record

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Commissioner for review. The record shall include: the application, any request for hearing thereon, motions and requests filed in written form, rulings thereon, the transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in correction with pre-hearing conferences, such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

(Effective September 11, 1974)

Sec. 31-372-30. Decision of the commissioner

If exceptions to a decision of a hearing examiner are taken pursuant to Section 31-372-28, the Commissioner shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make his decision. The decision may affirm, modify, or set aside, in whole or part the findings, conclusions, and the rule or order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken of each exception presented.

(Effective September 11, 1974)

Sec. 31-372-31—31-372-39. Reserved

Sec. 31-372-40. Motion for summary decision

(a) Any party may, at least 20 days before the date fixed for any hearing under Section 31-372-20 through 31-372-30, move with or without supporting affidavits for a summary decision in his favor of all or any part of the proceeding. Any other party may, within ten

days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding hearing examiner may, in his discretion, set the matter for argument and call for the submission of briefs.

(b) The filing of any documents under paragraph (a) of this section, shall be with the hearing examiner, and copies of any such documents shall be served in accordance with Section 31-372-21.

(c) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(d) Affidavits shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(e) Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(f) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the Commissioner unless the hearing examiner certifies in writing (1) that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion, and (2) that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the Commissioner shall so order.

(Effective September 11, 1974)

Sec. 31-372-41. Summary decision

(a) (1) Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue an initial decision to become final twenty days after service thereof, unless, within such period of time any party has filed written exception to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any objections to the exception and any supporting reasons.

Thereafter, the Commissioner, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(2) An initial decision and a final decision made under this paragraph shall include a statement of:

(i) Findings and conclusions, and the reasons or bases therefor, on all issues presented; and

(ii) The terms and conditions of the rule or order made.

(3) A copy of an initial decision and a final decision under this paragraph shall be served on each party.

(b) Where a genuine material question of fact is raised, the hearing examiner shall, and in any other case he may, set the case for an evidentiary hearing in accordance with Sections 31-372-20 through 31-372-30.

(Effective September 11, 1974)

Sec. 31-372-42—31-372-49. Reserved

Sec. 31-372-50. Effect of appeal of a hearing examiner's decision

A hearing examiner's decision under this part shall not be operative pending a decision on appeal by the Commissioner.

(Effective September 11, 1974)

Sec. 31-372-51. Finality for purposes of judicial review

Only a decision by the Commissioner shall be deemed final agency action for purposes of judicial review. A decision by a hearing examiner which becomes final for lack of appeal is not deemed final agency action.

(Effective September 11, 1974)

Standards

Sec. 31-372-100-1903. Safety and health standards for abatement verification

These Occupational Safety and Health Standards were promulgated by the Secretary of the U. S. Department of Labor under the authority of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Statute 1590–1620). Any changes, additions, deletions or interpretations subsequently made will be adopted as if fully set forth herein.

Title 29, Chapter XVII, Part 1910 as published in the Federal Register, Volume 39, Number 125, June 27, 1974.

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Part 1903	Abatement Verification	3-31-97	New

(Adopted effective March 27, 1998)

Sec. 31-372-101-1910. Safety and health standards for general industry

Adopt as Section 31-372-101-1910., U. S. Department of Labor, Occupational Safety and Health Administration, OSHA Safety and Health Standards (29 CFR 1910.), OSHA

Publication 2206, Revised November 7, 1978.

Also adopt the following amendments to Section 31-372-101-1910.:

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.19, 1910.1000 and 1910.1025	Occupational Exposure to Lead; Final Standard	11-14-78	New
1910.1025	Occupational Exposure to Lead; Attachments to Preamble for Final Standard	11-21-78	New
1910.1043 and 1910.1046	Occupational Exposure to Cotton Dust	12-5-78	Corrections
1910.1000	Air Contaminants Tables	12-8-78	Corrections
1910.1025	Occupational Exposure to Lead; Administrative Stay	1-26-79	Corrections
1910.1000	Occupational Exposure to Chlorine; Administrative Stay of Correction to Exposure Level	2-6-79	Adm. Stay
1910.1000	Occupational Exposure to Chlorine; Lifting of Administrative Stay	7-17-79	Correction
(Effective February 11, 1980)			
1910.1043	Occupational Exposure to Cotton Dust; Cotton Waste Processors and Users	1-26-79	Lift Stay
1910.1025	Occupational Exposure to Lead; Notice of Partial Stay	3-13-79	Stay
1910.1025	Occupational Exposure to Lead; Corrections to Preamble	4-6-79	Corrections
1910.1025	Occupational Exposure to Lead	8-28-79	Corrections
1910.1025	Occupational Exposure to Lead; Appendices to Standard	10-23-79	New
1910.1025	Occupational Exposure to Lead	11-30-79	Corrections
1910.177	Servicing Multi-Piece Rim Wheels; Procedures	1-29-80	New
1910.217	Mechanical Power Presses	2-8-80	Correction

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1043	Occupational Exposure to Cotton Dust; New Effective Dates	2-26-80	Effective Date
(Effective October 29, 1981)			
1910.20	Access to Employee Exposure and Medical Records	5-23-80	Revision
1910.423	Commercial Diving Operations	6-20-80	Correction
1910.1043	Occupational Exposure to Cotton Dust in Warehousing and Classing Industries	7-29-80	Effective Date
1910.20	Access to Employee Exposure and Medical Records	8-15-80	Corrections
1910.35, .37, .38 .107-.109 .155- .165b	Fire Protection; Means of Egress; Hazardous Materials	9-12-80	Revision
1910.1043	Occupational Exposure to Cotton Dust	9-30-80	Effective Date
1910.1043	Occupational Exposure to Cotton Dust	10-10-80	Amendment
1910.1043	Occupational Exposure to Cotton Dust	12-30-80	Amendment
1910.95	Occupational Noise Exposure; Hearing Conservation Amendment	1-16-81	Amendment
1910.301-.399	Electrical Standards	1-16-81	Revision
1910.1025	Occupational Exposure to Lead	1-21-81	Amendment
1910.1025	Occupational Exposure to Lead	2-6-81	Effective Date
1910.1025	Occupational Exposure to Lead	3-3-81	Effective Date
1910.1025	Occupational Exposure to Lead	3-27-81	Effective Date
1910.95	Occupational Noise Exposure; Hearing Conservation Amendment	4-10-81	Effective Date
1910.20	Access to Employee Exposure and Medical Records; Construction Industry; Administrative Stay	4-28-81	Stay
1910.1025	Occupational Exposure to Lead; Supplemental Statement of Reasons and Amendment of Standard	4-28-81	Effective Date

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910. Subpart L	Fire Protection; Means of Egress; Hazardous Materials	5-1-81	Corrections
1910.1025	Occupational Exposure to Lead, New Trigger Levels for Medical Removal Protection	5-1-81	Effective Date
(Effective October 29, 1981)			
1910.19	Occupational Exposure to Cotton Dust in Cotton Gins	6-19-81	Deletion
1910.1000	Occupational Exposure to Benzene	6-19-81	Deletion
1910. Subpart "S"	Electrical Standards; Correction	8-7-81	Correction
1910.95	Occupational Noise Exposure; Hearing Conservation Amendment; Rule and Proposed Rule	8-21-81	Amendment
1910.95	Occupational Noise Exposure; Hearing Conservation Amendment	9-11-81	Correction
1910.20	Access to Employee Exposure and Medical Records; Construction Industry; Lifting of Administrative Stay	9-15-81	Lifting of Administrative Stay
1910.1025	Occupational Exposure to Lead; Revised Supplemental Statement of Reasons	12-11-81	Revision
1910.106	Hazardous Materials; Attendant Exemption and Latch-Open Devices	9-7-82	Revision
1910.1025	Occupational Exposure to Lead; Respirator Fit Test	11-12-82	Revision
1910. Subpart "T"	Educational/Scientific Diving	11-26-82	Amendment
1910.1002	Occupational Exposure to Coal Tar Pitch Volatiles; Modification of Interpretation	1-21-83	Revision
1910.1025	Occupational Exposure to Lead; Respirator Fit Testing; Corrections	3-8-83	Correction
1910.95	Occupational Noise Exposure; Hearing Conservation Amendment; Final Rule	3-8-83	Revision
1910.95	Occupational Noise Exposure; Hearing Conservation Amendment; Corrections	6-28-83	Correction
1910.177	Servicing of Single Piece and Multi-Piece	2-3-84	Amendment

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
	Rim Wheels; Final Rule		
Part 1910	Revocation of Advisory and Repetitive Standards; Final Rule	2-10-84	Amendment
1910.1047	Occupational Exposure to Ethylene Oxide; Final Standard	6-22-84	New
(Effective May 3, 1985)			
1910.243	Power Lawnmowers; Amendments	2-1-85	Amendment
1910.1029	Coke Oven Emissions Standard; Conforming Deletions	9-13-85	Deletion
1910.1047	Occupational Exposure to Ethylene Oxide; Labeling Requirements	10-11-85	Amendment
(Effective August 22, 1986)			
1910.19	Special provisions for air contaminants	12-13-85	Amended
1910.1000	Air Contaminants	12-13-85	Amended
1910.1043	Cotton Dust	12-13-85	Revised
1910.19	Special provisions for air contaminants	6-20-86	Revised
1910.1001	Asbestos, tremolite, anthophyllite and actinolite	6-20-86	Revised
(Effective November 24, 1986)			
1910.1043	Occupational Exposure to Cotton Dust and Information Collection Requirements Approval	7-3-86	Correction
1910.1047	Occupational Exposure to Ethylene Oxide	7-10-86	Amendment and Correction
(Effective April 29, 1987)			
1910.430	Commercial diving standard	9-18-86	Amended
1910.145	Health and safety standards; accident prevention tags	9-19-86	Amended
	Recordkeeping requirements for tests, inspections and maintenance checks pertaining to:	9-29-86	
1910.68	Manlifts		Revised
1910.106	Flammable and combustible liquids		Amended
1910.157	Portable fire extinguishers		Revised

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.179	Overhead and gantry cranes		Revised
1910.180	Crawler, locomotive and truck cranes		Revised
1910.181	Derricks		Revised
1910.217	Mechanical power presses		Revised
1910.218	Forging machines		Revised
1910.252	Welding, cutting and brazing		Revised
1910.440	Recordkeeping requirements; commercial diving		Amended
(Effective July 9, 1987)			
1910.120	Hazardous Waste Operations and Emergency Response	12-19-86	(New) Interim Final Rule
(Effective August 21, 1987)			
1910.120	Hazardous Waste Operations and Emergency Response; Corrections	5-4-87	Amendment
1910.1001	Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Corrections and Information Collection Requirements Approval	5-12-87	Amendment
(Effective February 25, 1988)			
1910.1200	Hazard Communication	8-24-87	New
1910.19	Special provisions for air contaminants	9-11-87	Amendment
1910.1000	Air contaminants	9-11-87	Amendment
1910.1028	Benzene	9-11-87	New
1910.16	Longshoring and marine terminals	9-25-87	Addition
1910.177	Servicing multipiece and single piece rim wheels	9-25-87	Revision
1910.268	Telecommunications	9-28-87	Revision
(Effective June 27, 1988)			
1910.19	Special provisions for air contaminants	12-4-87	New
1910.1000	Air contaminants	12-4-87	Amendment
1910.1048	Formaldehyde	12-4-87	New

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
(Effective July 27, 1988)			
1910.272	Grain handling facilities	12-31-87	New
(Effective October 24, 1988)			
1910.1047	Occupational Exposure to Ethylene Oxide (EtO)	4-6-88	Revision Additions
	Safety Testing or Certification of Certain Workplace Equipment and Materials	4-12-88	
1910.7	Definition and requirements for a nationally recognized testing laboratory	4-12-88	New
1910.7	Correction to above	5-11-88	Correction
Subpart D-Walking-Working Surfaces			
1910.28	Safety requirements for scaffolding	4-12-88	Revision
Subpart E - Means of Egress			
1910.35	Definitions	4-12-88	Revision
Subpart H - Hazardous Materials			
1910.103	Hydrogen	4-12-88	Revision
1910.106	Flammable and combustible liquids	4-12-88	Revision
1910.107	Spray finishing using flammable and combustible materials	4-12-88	Revision
1910.108	Diptanks containing flammable or combustible liquids	4-12-88	Revision
1910.109	Explosive and blasting agents	4-12-88	Revision
1910.110	Storage and handling of liquified petroleum gases	4-12-88	Revision
1910.111	Storage and handling of anhydrous ammonia	4-12-88	Revision/Addition
Subpart L - Fire Protection			
1910.155	Scope and application and definitions applicable to this subpart	4-12-88	Revision/Addition
Subpart N - Materials Handling and Storage			
1910.178	Powered industrial trucks	4-12-88	Revision
1910.180	Crawler locomotive and truck cranes	4-12-88	Revision
1910.181	Derricks	4-12-88	Revision

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
Subpart Q - Welding, Cutting and Brazing			
1910.251	Definitions	4-12-88	Revision
Subpart R - Special Industries			
1910.265	Sawmills	4-12-88	Revision
1910.266	Pulpwood logging	4-12-88	Revision
Subpart S - Electrical			
1910.399	Definitions applicable to this subpart	4-12-88	Revision
(Effective February 6, 1989)			
1910.211	Definition	3-14-88	Amendment
1910.217	Mechanical Power Presses	3-14-88	Amendment
(Effective February 6, 1989)			
1910.177	Servicing of Multi-Piece and Single Piece Rim Wheels	9-8-88	Revision
1910.1001	Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite	9-14-88	Revision/Addition
1910.20	Access to Employee Exposure and Medical Records	9-29-88	Revision
(Effective March 23, 1989)			
1910.120	Hazardous Waste Operations and Emergency Response Operation; Final Rule	3-6-89	Revision
(Effective September 25, 1989)			
Title	Subpart S—Underground Construction, Caisson, Cofferdams and Compressed Air.	6/2/89	Revision
1926.800	Underground Construction	6/2/89	Revision
(Effective December 4, 1989)			
1910.120	Hazardous Waste Operations and Emergency Response	4/13/90	Corrections
Subpart Q - Welding, Cutting and Brazing		4/11/90	Reorganization
1910.252	General requirements		
1910.253	Oxygen-fuel gas welding and cutting		
1910.254	Arc welding and cutting		
1910.255	Resistance welding		
1910.256	Sources of standard		

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.257	Standards organization		
1910.1001	Asbestos, tremolite, anthophyllite and actinolite	2/5/90	Amendment and Revision
1910.1025	Lead	1/30/90	Revision
(Effective December 31, 1990)			
	Electrical Safety Related Work Practices		
1910.26	Portable metal ladders	8-6-90	Revised
1910.67	Vehicle-mounted elevating and rotating work platforms		Revised
1910.68	Manlifts		Revised
1910.94	Ventilation		Amended
1910.103	Hydrogen		Revised
1910.106	Flammable and combustible liquids		Amended/Revised
1910.110	Storage and handling of liquified petroleum gases		Amended
1910.178	Powered industrial trucks		Revised
1910.179	Overhead and gantry cranes		Revised
1910.180	Crawler, locomotive and truck cranes		Revised
1910.181	Derricks		Revised
1910.252	Welding cutting and brazing		Revised
1910.261	Pulp, paper and paper board		Revised
1910.265	Sawmills		Amended
1910.266	Pulpwood logging		Amended
1910.304	Wiring design and protection		Amended
1910.331	Scope		New
1910.333	Selection and use of work practices		New
1910.334	Use of equipment		New
1910.335	Safeguards for personal protection		New
1910.399	Definitions applicable to this subpart		Amended
	Electrical Safety Related Work Practices		
1910.252	Welding cutting and brazing	11-1-90	Correction
1910.333	Selection and use of work practices		Correction

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.334	Use of equipment		Correction
1910.147	Control of hazardous energy sources (Lock-out/Tagout)	9-20-90	Correction
(Effective November 29, 1991)			
1910.332	Electrical Safety related work practices-training	8/6/90	New
1910.399	Electrical Safety related work practices - definitions	11/1/90	Correction
(Effective November 29, 1991)			
1910.120	Hazardous Waste Operations and Emergency Response	4/18/91	Correction
1910.1025	Occupational Exposure to Lead	5/31/91	Correction
(Effective December 30, 1991)			
1910.1030	Bloodborne Pathogens	12/6/91	Final Rule; New
(Effective May 22, 1992)			
1910.109	Explosives and blasting agents	2/24/92	Revision
1910.119	Process safety management of highly hazardous chemicals	2/24/92	New
(Effective September 17, 1992)			
1910.1001	Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite	6/8/92	Amended
1910.1048	Occupational Exposure to Formaldehyde	5/27/92	Amended
1910.1048	Occupational Exposure to Formaldehyde	6/10/92	Correction
1910.1048	Occupational Exposure to Formaldehyde	6/18/92	Correction
(Effective July 2, 1993)			
1910.19	Special Provisions for Air Contaminants	8/10/92	Amended
1910.19	Special Provisions for Air Contaminants	9/14/92	Amended
1910.1000	Occupational Exposure to Cadmium (Tables)	9/14/92	Amended
1910.1027	Occupational Exposure to Cadmium	9/14/92	New
1910.1050	Occupational Exposure to 4, 4’ Methylenedianiline (MDA)	8/10/92	New

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1050	Occupational Exposure to 4, 4' Methylene-dianiline (MDA)	11/3/92	Amended
(Effective July 21, 1993)			
1910.146	Permit-Required Confined Spaces	1/14/93	New
1910.146	Permit-Required Confined Spaces	6/29/93	Correction
(Effective December 22, 1993)			
1910.137	Electrical Protective Equipment	1/31/94	Revised
1910.269	Electrical Power Generation, Transmission, and Distribution	1/31/94	New
1910.331	Scope	1/31/94	Amended
1910.333	Selection and Use of Work Practices	1/31/94	Revised
1910.1200	Hazard Communication	2/9/94	Amendment
(Effective August 26, 1994)			
1910.132	General Requirements	4/6/94	New
1910.133	Eye and Face Protection	4/6/94	Revision
1910.135	Head Protection	4/6/94	Revision
1910.136	Foot Protection	4/6/94	Revision
1910.138	Hand Protection	4/6/94	New
(Effective October 20, 1994)			
1910.1201	Retention of DOT markings, placards and labels.	7/19/94	Amended
(Effective January 19, 1995)			
1910.269	Electric power generation, transmission, and distribution.	8/9/94	Revision
1910.19	Special provisions for air contaminants.	8/9/94	Revised
1910.1001	Asbestos.	8/10/94	Amended
(Effective February 23, 1995)			
1910.266	Logging operations.	10/12/94	Revised
1910.269	Electrical protective equipment.	10/12/94	Revised
(Effective April 19, 1995)			
1910.272	Grain handling facilities	03/08/96	Amended
(Effective April 23, 1997)			
1910.19	Special provisions for air contaminants	11-04-96	New

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1000	Butadiene (1,3 Butadiene)	11/04/96	Amended
1910.1051	Butadiene (1,3 Butadiene)	11/04/96	New
Appendix A	Substance Safety Data Sheet	11/04/96	New
Appendix B	Substance Technical Guidelines	11/04/96	New
Appendix C	Medical Screening, Surveillance	11/04/96	New
Appendix D	Sampling and Analytical Method	11/04/96	New
Appendix E	Respirator Fit Testing	11/04/96	New
Appendix F	Medical Questionnaires	11/04/96	New
(Effective June 27, 1997)			
1910.19	Special provisions for air contaminants	1/10/97	New
1910.1000	Table Z-2	1/10/97	Revised
1910.1052	Methylene chloride	1/10/97	New
(Effective September 5, 1997)			
1910.94	Ventilation	1/08/98	Amended
1910.111	Storage and handling of anhydrous ammonia	1/08/98	Amended
1910.139	Respiratory protection for M. Tuberculosis	1/08/98	Amended
1910.134	Respiratory protection	1/08/98	Added
1910.134	Respiratory protection	4/23/98	Corrected
Subpart L			
1910.156	Fire Brigades	1/08/98	Amended
Subpart Q			
1910.252	General requirements	1/08/98	Amended
Subpart R			
1910.261	Pulp, paper and paperboard	1/08/98	Amended
Subpart Z			
1910.1001	Asbestos	1/08/98	Amended
1910.1003	Carcinogens (4-Nitrobiphenyl, etc.)	1/08/98	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1017	Vinyl Chloride	1/08/98	Amended
1910.1018	Inorganic arsenic	1/08/98	Amended
1910.1025	Lead	1/08/98	Amended
1910.1027	Cadmium	1/08/98	Amended
1910.1028	Benzene	1/08/98	Amended
1910.1029	Coke oven missions	1/08/98	Amended
1910.1043	Cotton dust	1/08/98	Amended
1910.1044	1,2-Dibromo-3 chloropropane	1/08/98	Amended
1910.1045	Acrylonitrile	1/08/98	Amended
1910.1047	Ethylene oxide	1/08/98	Amended
1910.1048	Formaldehyde	1/08/98	Amended
1910.1050	Methylenedianiline	1/08/98	Amended
1910.1051	1,3-Butadiene	1/08/98	Amended
1910.1052	Methylene chloride	1/08/98	Amended
(Effective August 31, 1999)			
Subpart H	Hazardous Materials	06/18/98	Amend
Subpart J	General Environmental Controls	06/18/98	Amend
Subpart K	Medical and First Aid	06/18/98	Amend
Subpart L	Fire Protection	06/18/98	Amend
Subpart N	Materials Handling and Storage	06/18/98	Amend
Subpart R	Special Industries	6/18/98	Amend
Subpart Z	Toxic and Hazardous Substances	06/18/98	Amend
1910.16	Longshoring and marine terminals	07/25/97	Revise
1910.16	Longshoring and marine terminals	12/01/98	Amend
1910.178	Powered industrial trucks	12/01/98	Amend
Subpart Z		1/18/01	Amended
Of 29 CFR 1910			
1910.1030	Bloodborne Pathogens	1/18/01	Amended
(Effective February 27, 2002)			
Subpart Z		1/18/01	Revised

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
Of 29 CFR 1910			
1910.1043	Cotton dust	1/18/01	Revised
(Effective February 27, 2002)			
Subpart E of 29 CFR 1910	Exit Routes, Emergency Action Plans, and Fire Prevention Plans	11/7/02	Revised
1910.33	Table of Contents	11/7/02	Added
1910.34	Coverage and Definitions	11/7/02	Added
1910.35	Compliance with NFPA 101-2000, Life Safety Code	11/7/02	Revised
1910.36	Design and construction requirements for exit routes	11/7/02	Revised
1910.37	Maintenance, safeguards, and operational features for exit routes	11/7/02	Revised
1910.38	Emergency action plans	11/7/02	Revised
1910.39	Fire prevention plans	11/7/02	Added
Subpart H of 29 CFR 1910	Hazardous Materials	11/7/02	Revised
1910.119	Process safety management of highly hazardous chemicals	11/7/02	Revised
1910.120	Hazardous waste operations and and emergency response	11/7/02	Revised
Subpart L of 29 CFR 1910	Fire Protection	11/7/02	Revised
1910.157	Portable fire extinguishers	11/7/02	Revised
Subpart R of	Special Industries	11/7/02	Revised

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
29 CFR 1910			
1910.268	Telecommunications	11/7/02	Revised
1910.272	Grain handling facilities	11/7/02	Revised
Appendix A to 1910.272		11/7/02	Revised
Subpart Z	Toxic and Hazardous Substances	11/7/02	Revised
1910.1047	Ethylene oxide	11/7/02	Revised
1910.1050	Methylenedianiline	11/7/02	Revised
1910.1051	1,3-Butadiene	11/7/02	Revised
(Effective February 9, 2004)			
Subpart I	Authority	12/31/03	Amended
1910.139	Respiratory protection for M. Tuberculosis	12/31/03	Removed
(Effective September 1, 2004)			
Subpart T	Authority	2/17/04	Amended
1910.401	Scope and application	2/17/04	Amended
1910.402	Definitions	2/17/04	Amended
Appendix C	Alternative Conditions Under Section 1910.401(a)(3) for Recreational Diving Instructors and Diving Guides (Mandatory)	2/17/04	Added
(Adopted effective June 7, 2005)			
Subpart I	Authority	8/4/04	Amended
1910.134	Respiratory Protection -	8/4/04	Amended
Appendix A	Controlled Negative Pressure REDON Fit Testing Protocol		
(Effective September 2, 2005)			
1910	Authority	2/28/06	Amended
1910.1000	Air contaminants		
Table Z-1	Limits for Air Contaminants	2/28/06	Amended
Table Z-2		2/28/06	Amended
1910.1026	Chromium (VI)	2/28/06	Added

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
(Adopted effective January 2, 2007)			
1910	Authority	8/24/06	Amended
1910.134	Respiratory protection	8/24/06	Amended
Subpart Z	Authority	8/24/06	Amended
1910.1001	Asbestos	8/24/06	Amended
1910.1017	Vinyl chloride	8/24/06	Amended
1910.1018	Inorganic arsenic	8/24/06	Amended
1910.1025	Lead	8/24/06	Amended
1910.1027	Cadmium	8/24/06	Amended
1910.1028	Benzene	8/24/06	Amended
1910.1029	Coke oven emissions	8/24/06	Amended
1910.1043	Cotton dust	8/24/06	Amended
1910.1044	1,2 – Dibromo-3-chloropropane	8/24/06	Amended
1910.1045	Acrylonitrile	8/24/06	Amended
1910.1047	Ethylene oxide	8/24/06	Amended
1910.1048	Formaldehyde	8/24/06	Amended
1910.1050	Methylenedianiline	8/24/06	Amended
1910.1052	Methylene chloride	8/24/06	Amended
(Adopted effective September 11, 2007)			
Subpart A	General	2/14/07	Amended
1910.6	Incorporation by reference	2/14/07	Amended
Subpart F	Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms	2/14/07	Amended
1910.66	Powered platforms for building maintenance	2/14/07	Amended
Appendix D	Existing Installations (Mandatory)	2/14/07	Amended
Subpart S	Electrical	2/14/07	Amended
1910.302	Electric utilization systems	2/14/07	Amended
1910.303	General	2/14/07	Amended
1910.304	Wiring design and protection	2/14/07	Amended
1910.305	Wiring methods, components, and equip	2/14/07	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
	ment for general use		
1910.306	Specific purpose equipment and installations	2/14/07	Amended
1910.307	Hazardous (classified) locations	2/14/07	Amended
1910.308	Special systems	2/14/07	Amended
1910.399	Definitions applicable to this subpart	2/14/07	Amended
Appendix A	References for Further Information	2/14/07	Amended
Appendix B		2/14/07	Removed
Appendix C		2/14/07	Removed
(Adopted effective March 10, 2008)			
Subpart I	Authority	11/15/07	Amended
1910.132	General requirements	11/15/07	Amended
(Adopted effective December 9, 2008)			
Subpart A	Authority	12/12/08	Amended
1910.9	Compliance duties owed to each employee	12/12/08	Added
Subpart G	Authority	12/12/08	Amended
1910.95	Occupational noise exposure	12/12/08	Amended
Subpart I	Authority	12/12/08	Amended
1910.134	Respiratory protection	12/12/08	Amended
Subpart L	Authority	12/12/08	Amended
1910.156	Fire brigades	12/12/08	Amended
Subpart Z	Authority	12/12/08	Amended
1910.1001	Asbestos	12/12/08	Amended
1910.1003	13 Carcinogens (4-Nitrobiphenyl, etc.)	12/12/08	Amended
1910.1017	Vinyl chloride	12/12/08	Amended
1910.1018	Inorganic arsenic	12/12/08	Amended
1910.1025	Lead	12/12/08	Amended
1910.1026	Chromium (VI)	12/12/08	Amended
1910.1027	Cadmium	12/12/08	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1028	Benzene	12/12/08	Amended
1910.1029	Coke oven emissions	12/12/08	Amended
1910.1030	Bloodborne pathogens	12/12/08	Amended
1910.1043	Cotton dust	12/12/08	Amended
1910.1044	1, 2-dibromo-3-chloropropane	12/12/08	Amended
1910.1045	Acrylonitrile	12/12/08	Amended
1910.1047	Ethylene oxide	12/12/08	Amended
1910.1048	Formaldehyde	12/12/08	Amended
1910.1050	Methylenedianiline	12/12/08	Amended
1910.1051	Butadiene	12/12/08	Amended
1910.1052	Methylene chloride	12/12/08	Amended
(Adopted effective August 11, 2009)			
Subpart A	Authority	9/9/09	Amended
1910.6	Incorporation by reference	9/9/09	Amended
Subpart G			
1910.94	Ventilation	9/9/09	Amended
Subpart I	Authority	9/9/09	Amended
1910.133	Eye and face protection	9/9/09	Amended
1910.135	Head protection	9/9/09	Amended
1910.136	Foot protection	9/9/09	Amended
Appendix B	Non-Mandatory Compliance Guidelines for Hazard Assessment And Personal Protective Equipment Selection	9/9/09	Amended
Subpart Q			
1910.252	General requirements	9/9/09	Amended
(Adopted effective August 18, 2010)			
Subpart A	Authority	11/10/09	Amended
1910.6	Incorporation by reference	11/10/09	Amended
Subpart H	Authority	11/10/09	Amended
1910.102	Acetylene	11/10/09	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
(Adopted effective October 12, 2010)			
Subpart A - General	Authority	5/14/10	Amended
Subpart Z - Toxic and Hazardous Sub-stances	Authority	5/14/10	Amended
1910.1026	Chromium (VI)	5/14/10	Amended
(Adopted effective December 14, 2010)			
Subpart A			
1910.6	Incorporation by reference	6/8/11	Amended
Subpart E	Authority	6/8/11	Amended
Subpart E – Heading	Exit Routes and Emergency Planning	6/8/11	Amended
1910.33	Table of contents	6/8/11	Amended
1910.34	Coverage and definitions	6/8/11	Amended
1910.35	Compliance with alternate exit-route codes	6/8/11	Amended
1910.36	Design and construction requirements for exit routes	6/8/11	Amended
Subpart I	Authority	6/8/11	Amended
1910.132		6/8/11	Amended
1910.134	Respiratory protection	6/8/11	Amended
Subpart J	Authority	6/8/11	Amended
1910.141	Sanitation	6/8/11	Amended
Subpart N	Authority	6/8/11	Amended
1910.184	Slings	6/8/11	Amended
Subpart T	Authority	6/8/11	Amended
1910.440	Recordkeeping requirements	6/8/11	Amended
Subpart Z	Authority	6/8/11	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1001		6/8/11	Amended
1910.1003	13 Carcinogens (4-nitrobiphenyl, etc.)	6/8/11	Amended
1910.1017		6/8/11	Amended
1910.1018		6/8/11	Amended
1910.1020		6/8/11	Amended
1910.1025	Lead	6/8/11	Amended
1910.1027	Cadmium	6/8/11	Amended
1910.1028	Benzene	6/8/11	Amended
1910.1029		6/8/11	Amended
1910.1030	Bloodborne pathogens	6/8/11	Amended
1910.1043		6/8/11	Amended
1910.1044		6/8/11	Amended
1910.1045		6/8/11	Amended
1910.1047		6/8/11	Amended
1910.1050		6/8/11	Amended
1910.1051	1,3-Butadiene	6/8/11	Amended
1910.1450	Occupational exposure to hazardous chemicals in laboratories		
Appendix A to § 1910.1450	Appendix A to § 1910.1450 – National Research Council Recommendations Concerning Chemical Hygiene in Laboratories (Non-Mandatory)	6/8/11	Amended
(Effective September 5, 2012)			
Subpart J -	Authority	5/2/11	Amended
1910.145	Specifications for accident prevention signs and tags	5/2/11	Amended
1910.147	The control of hazardous energy (lockout/tagout)	5/2/11	Amended
Subpart N	Authority	5/2/11	Amended
1910.177		5/2/11	Amended
(Effective September 5, 2012)			

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.6	Incorporation by reference	3/8/12	Amended
Subpart H	Authority	3/8/12	Amended
1910.102	Acetylene	3/8/12	Amended
(Effective January 31, 2013)			
Subpart A	Authority	3/26/12	Amended
1910.6	Incorporation by reference	3/26/12	Amended
Subpart H	Authority	3/26/12	Amended
1910.106	Flammable liquids.	3/26/12	Amended
1910.107	Spray finishing using flammable and combustible materials.	3/26/12	Amended
1910.119	Process safety management of highly hazardous chemicals.	3/26/12	Amended
1910.120	Hazardous waste operations and emergency response.	3/26/12	Amended
1910.123	Dipping and coating operations: Coverage and definitions.	3/26/12	Amended
1910.124	General requirements for dipping and coating operations.	3/26/12	Amended
1910.125	Additional requirements for dipping and coating operations that use flammable liquids or liquids with flashpoints greater than 199.4°F (93°C).	3/26/12	Amended
1910.126	Additional requirements for special dipping and coating requirements.	3/26/12	Amended
1910.252	General requirements.	3/26/12	Amended
Subpart Z	Authority	3/26/12	Amended
1910.1001	Asbestos.	3/26/12	Amended
1910.1003	13 Carcinogens (4-nitrobiphenyl, etc.).	3/26/12	Amended
1910.1017	Vinyl chloride.	3/26/12	Amended
1910.1018	Inorganic arsenic.	3/26/12	Amended
1910.1025	Lead.	3/26/12	Amended
Appendix B	Employee Standard Summary	3/26/12	Amended
1910.1026	Chromium (VI).	3/26/12	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1910.1027	Cadmium.	3/26/12	Amended
1910.1028	Benzene.	3/26/12	Amended
1910.1029	Coke oven emissions.	3/26/12	Amended
1910.1043	Cotton dust.	3/26/12	Amended
1910.1044	1,2-dibromo-3-chloropropane.	3/26/12	Amended
1910.1045	Acrylonitrile.	3/26/12	Amended
1910.1047	Ethylene oxide.	3/26/12	Amended
1910.1048	Formaldehyde.	3/26/12	Amended
1910.1050	Methylenedianiline.	3/26/12	Amended
1910.1051	1,3-Butadiene.	3/26/12	Amended
1910.1052	Methylene chloride.	3/26/12	Amended
1910.1200	Hazard communication.	3/26/12	Amended
Appendix A		3/26/12	Removed
Appendix B		3/26/12	Removed
Appendix D		3/26/12	Amended
Appendix E		3/26/12	Removed
Appendix A	Health Hazard Criteria (MANDATORY)	3/26/12	New
Appendix B	Physical Criteria (MANDATORY)	3/26/12	New
Appendix C	ALLOCATION OF LABEL ELEMENTS (MANDATORY)	3/26/12	New
Appendix D	Safety Data Sheets (MANDATORY)	3/26/12	New
Appendix F	Guidance for Hazard Classifications Re: Carcinogenicity (Non-Mandatory)	3/26/12	New
1910.1450	Occupational exposure to hazardous chemicals in laboratories.	3/26/12	Amended
Appendix A	National Research Council Recommendations Concerning Chemical Hygiene in Lab	3/26/12	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
	oratories (Non-Mandatory)		
(Effective April 1, 2013)			
Subpart A	Authority	11/16/12	Amended
1910.6	Incorporation by reference	11/16/12	Amended
1910.135	Head protection	11/16/12	Amended
(Effective December 13, 2013)			
Subpart I	Authority	4/11/14	Amended
1910.136	Foot protection.	4/11/14	Amended
1910.137	Electrical protective equipment	4/11/14	Amended
Appendix B	Nonmandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection	4/11/14	Amended
Subpart R	Authority	4/11/14	Amended
1910.269	Electric power generation, transmission and distribution.	4/11/14	Amended
Subpart S	Authority	4/11/14	Amended
1910.331	Scope.	4/11/14	Amended
1910.399		4/11/14	Amended
(Effective March 10, 2015)			

Sec. 31-372-102-1915. Safety and Health Regulations for Ship Repairing

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
Subpart A — General Provisions			
Section			
1915.1	Purpose, scope and responsibility		
1915.2	Definitions		
1915.3	Penalty		
1915.4	(Reserved)		
1915.5	Reference specifications, standards, and codes		
1915.6	Notification of accidents resulting in fatalities or serious injuries		

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1915.7	Amendment of the regulations of this part		
Part 1915	Authority	6/8/11	Amended
Subpart B	Appendix A to Subpart B of Part	6/8/11	Amended
Appendix A	1915 – Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres		
1915.112	Ropes, chains, and slings	6/8/11	Amended
1915.113	Shackles and hooks	6/8/11	Amended
1915.118		6/8/11	Amended
1915.152		6/8/11	Amended
1915.1001	Asbestos	6/8/11	Amended
(Effective September 5, 2012)			
Part 1915	Authority	5/2/11	Amended
1915.5	Incorporation by reference	5/2/11	Amended
Subpart F	General Working Conditions	5/2/11	Amended
1915.80	Scope, application, definitions and effective dates	5/2/11	Amended
1915.81	Housekeeping	5/2/11	New
1915.82	Lighting	5/2/11	New
1915.83	Utilities	5/2/11	New
1915.84	Working alone	5/2/11	New
1915.85	Vessel radar and communication systems	5/2/11	New
1915.86	Lifeboats	5/2/11	New
1915.87	Medical services and first aid	5/2/11	New
1915.88	Sanitation	5/2/11	New
1915.89	Control of hazardous energy (lockout/tags-plus)	5/2/11	New
1915.90	Safety color code for marking physical hazards	5/2/11	New
1915.91	Accident prevention signs and tags	5/2/11	New
1915.92	Retention of DOT markings, placards, and labels	5/2/11	New
1915.93	Motor vehicle safety equipment, operation	5/2/11	New

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
	and maintenance		
1915.94	Servicing multi-piece and single-piece rim wheels	5/2/11	New
Subpart J			
1915.162	Ship's boilers	5/2/11	Amended
1915.163	Ship's piping systems	5/2/11	Amended
1915.164	Ship's propulsion machinery	5/2/11	Amended
1915.181	Electric circuits and distribution boards	5/2/11	Amended
(Effective September 5, 2012)			
Subpart B — Explosive and Other Dangerous Atmospheres			
1915.10	Competent person		
1915.11	Precautions before entering		
1910.1000	Air Contaminants	1-19-89	Revision
1910.1000	Air Contaminants	7-5-89	Correction
(Effective December 22, 1989)			
1910.1048	Occupational exposure to formaldehyde	7/13/89	Correction and Technical Amendments
1910.1048	Occupational exposure to formaldehyde	8/1/89	Correction
1910.66	Powered platforms for building maintenance	7/28/89	Revision
1910.150	Redesignated from 1910.147	9/1/89	Redesignated
1910.147	Control of hazardous energy sources (Lockout/Tagout)	9/1/89	New
1910.1000	Air Contaminants	9/5/89	Revision
(Effective March 23, 1990)			
1910.1450	Occupational Exposure to Hazardous Chemicals in Laboratories	1/31/90	New
(Effective September 21, 1990)			
1915.12	Cleaning and other cold work		
1915.13	Certification before hot work is begun		
1915.14	Maintaining gas free conditions		
1915.15	Warning signs		

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
Subpart C — Surface Preparation and Preservation			
1915.21	Toxic cleaning solvents		
1915.22	Chemical paint and preservative removers		
1915.23	Mechanical paint removers		
1915.24	Painting		
1915.25	Flammable liquids		
Subpart D — Welding, Cutting and Heating			
1915.31	Ventilation and protection in welding, cutting and heating		
1915.32	Fire prevention		
1915.33	Welding, cutting and heating in way of preservative coatings		
1915.34	Welding, cutting and heating of hollow metal containers and structures not covered by § 1915.11		
1915.35	Gas welding and cutting		
1915.36	Arc welding and cutting		
1915.37	Uses of fissionable material in ship repair		
Subpart E — Scaffolds, Ladders and Other Working Surfaces			
1915.41	Scaffolds or staging		
1915.42	Ladders		
1915.43	Guarding of deck openings and edges		
1915.44	Access to vessels		
1915.45	Access to and guarding of dry docks and marine railways		
1915.46	Access to cargo spaces and confined spaces		
1915.47	Working surfaces		
Subpart F — General Working Conditions			
1915.51	Housekeeping		
1915.52	Illumination		
1915.53	Utilities		
1915.54	Work in confined or isolated spaces		
1915.55	Work on or in the vicinity of radar and radio		

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1915.56	Work in or on lifeboats		
1915.57	Health and sanitation		
1915.58	First aid		
Subpart G — Gear and Equipment for Rigging and Materials Handling			
1915.61	Inspection		
1915.62	Ropes, chains and slings		
1915.63	Shackles and hooks		
1915.64	Chain falls and pull-lifts		
1915.65	Hoisting and hauling equipment		
1915.66	Use of gear		
1915.67	Qualifications of operators		
1915.68	Tables		
Subpart H — Tools and Related Equipment			
1915.71	General precautions		
1915.72	Portable electric tools		
1915.73	Hand tools		
1915.74	Abrasive wheels		
1915.75	Powder actuated fastening tools		
1915.76	Internal combustion engines, other than ship's equipment		
Subpart I — Personal Protective Equipment			
1915.81	Eye protection		
1915.82	Respiratory protection		
1915.83	Head, foot and body protection		
1915.84	Life saving equipment		
Subpart J — Ship's Machinery and Piping Systems			
1915.91	Ship's boilers		
1915.92	Ship's piping systems		
1915.93	Ship's propulsion machinery		
1915.94	Ship's deck machinery		
Subpart K — Portable, Unfired Pressure Vessels, Drums and Containers, Other			

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
Than Ship's Equipment			
1915.101	Portable air receivers and other unfired pressure vessels		
1915.102	Drums and containers		
Subpart L — Electrical Machinery			
1915.111	Electrical circuits and distribution boards		
	Changes—Effective May 3, 1984		
Part 1915	Occupational Safety and Health Standards for Shipyard Employment; Final Rule4-20-82	Consolidaton of Standards	
	Subject Index for 29 CFR 1915—Ship Repairing.		
	Recordkeeping requirements for tests, inspections and maintenance checks pertaining to:	9-29-86	
1915.113	Shackles and hooks		Revised
1915.172	Portable air receivers and other unfired pressure vessels		Revised
(Effective July 9, 1987)			
1915.99	Hazard Communication	8-24-87	New
(Effective June 27, 1988)			
1915.1027	Occupational Exposure to Cadmium	9/14/92	New
(Effective July 21, 1993)			
1915.1200	Hazard Communication	2/9/94	Amendment
(Effective August 26, 1994)			
1915.100	Retention of DOT markings, placards and labels.	7/19/94	Amended
(Effective January 19, 1995)			
1915.7	Competent person	7/25/94	Revision
Subpart B	Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment	7/25/94	Revision
1915.11	Scope, application and definitions applicable to this subpart	7/25/94	Revision

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1915.12	Precautions before entering confined and enclosed spaces and other dangerous atmospheres	7/25/94	Revision
1915.13	Cleaning and other cold work	7/25/94	Revision
1915.14	Hot work	7/25/94	Revision
1915.15	Maintenance of safe conditions	7/25/94	Revision
1915.16	Warning signs and labels	7/25/94	Revision
1915.1001	Asbestos	8/10/94	Revised
(Effective February 23, 1995)			
1915.1000	Butadiene (1,3 Butadiene)	11-04-96	Amended
(Effective June 27, 1997)			
1915.1000	Table Z	1/10/97	Revised
1915.1052	Methylene chloride	1/10/97	New
(Effective September 5, 1997)			
1915.32	Toxic cleaning solvents	5-24-96	Amended
1915.33	Chemical paint and preservative removers	5-24-96	Amended
1915.34	Mechanical paint removers	5-24-96	Amended
1915.35	Painting	5-24-96	Amended
1915.134	Abrasive wheels	5-24-96	Amended
1915.135	Powder actuated fastening tools	5-24-96	Amended
Subpart I	Personal Protective Equipment (PPE)	5-24-96	Revised
1915.5	Incorporation by reference	5-24-96	Revised
1915.152	[Corrected placement]	6-13-96	Corrected
(Effective May 30, 1997)			
1915	Authority	9/15/04	Amended
1915.5	Incorpation By Reference	9/15/04	Amended
1915.52	Fire Prevention	9/15/04	Removed
1915	Fire Protection in Shipyard	9/15/04	Added
Subpart P	Employment		
1915.501	General Provisions	9/15/04	Added
1915.502	Fire safety plan	9/15/04	Added
1915.503	Precautions for hot work	9/15/04	Added

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1915.504	Fire watches	9/15/04	Added
1915.505	Fire response	9/15/04	Added
1915.506	Hazards of fixed extinguishing systems on board vessels and vessel sections	9/15/04	Added
1915.507	Land-side fire protection systems	9/15/04	Added
1915.508	Training	9/15/04	Added
1915.509	Definitions applicable to this subpart	9/15/04	Added
Appendix A	Model Fire Safety Plan	9/15/04	Added
To Subpart P	(Non-mandatory)		
(Effective September 2, 2005)			
1915	Authority	2/28/06	Amended
1915.1000	Air contaminants	2/28/06	Amended
Table Z	Shipyards	2/28/06	Amended
1915.1026	Chromium (VI)	2/28/06	Added
(Adopted effective January 2, 2007)			
1915	Authority	8/24/06	Amended
1915.1001	Asbestos	8/24/06	Amended
(Adopted effective September 11, 2007)			
1915	Authority	11/15/07	Amended
1915.152	General requirements	11/15/07	Amended
(Adopted effective December 9, 2008)			
1915	Authority	12/12/08	Amended
Subpart A			
1915.9	Compliance duties owed to each employee	12/12/08	Added
Subpart Z			
1915.1001	Asbestos	12/12/08	Amended
1915.1026	Chromium (IV)	12/12/08	Amended
(Adopted effective August 11, 2009)			
Part 1915	Authority	3/26/12	Amended
1915.1001	Asbestos.	3/26/12	Amended

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1915.1026	Chromium (VI).	3/26/12	Amended
(Effective April 1, 2013)			
Subpart A			
1915.5	Incorporation by reference	11/16/12	Amended
1915.155	Head protection	11/16/12	Amended
(Effective December 13, 2013)			

Sec. 31-372-103-1916. Safety and Health Regulations for Shipbuilding

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
Subpart A	**— General Provisions**		
Section			
1916.1	Purpose, scope and responsibility		
1916.2	Definitions		
1916.3	Penalty		
1916.4	(Reserved)		
1916.5	Reference specifications, standards, and codes		
1916.6	Notification of accidents resulting in fatalities or serious injuries		
1916.7	Amendment of the regulations of this part		
Subpart B — Explosive and Other Dangerous Atmospheres			
1916.10	Competent person		
Subpart C — Surface Preparation and Preservation			
1916.21	Toxic cleaning solvents		
1916.22	Chemical paint and preservative removers		
1916.23	Mechanical paint removers		
1916.24	Painting		
1916.25	Flammable liquids		
Subpart D — Welding, Cutting and Heating			
1916.31	Ventilation and protection in welding, cutting		

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
	and heating		
1916.32	Fire prevention		
1916.33	Welding, cutting and heating in way of preservative coatings		
1916.34	Welding, cutting and heating of hollow metal containers and structures		
1916.35	Gas welding and cutting		
1916.36	Arc welding and cutting		
1916.37	Uses of fissionable material in shipbuilding		
Subpart E — Scaffolds, Ladders and Other Working Surfaces			
1916.41	Scaffolds or staging		
1916.42	Ladders		
1916.43	Guarding of deck openings and edges		
1916.44	Access to vessels		
1916.45	Access to and guarding of dry docks and marine railways		
1916.46	Access to cargo spaces and confined spaces		
1916.47	Working surfaces		
Subpart F — General Working Conditions			
1916.51	Housekeeping		
1916.52	Illumination		
1916.53	Utilities		
1916.54	Work in confined or isolated spaces		
1916.55	Work on or in the vicinity of radar and radio		
1916.56	Work in or on lifeboats		
1916.57	Health and sanitation		
1916.58	First aid		
Subpart G — Gear and Equipment for Rigging and Materials Handling			
1916.61	Inspection		
1916.62	Ropes, chains and slings		
1916.63	Shackles and hooks		

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
1916.64	Chain falls and pull-lifts		
1916.65	Hoisting and hauling equipment		
1916.66	Use of gear		
1916.67	Qualifications of operators		
1916.68	Tables		
Subpart H — Tools and Related Equipment			
1916.71	General precautions		
1916.72	Portable electric tools		
1916.73	Hand tools		
1916.74	Abrasive wheels		
1916.75	Powder actuated fastening tools		
1916.76	Internal combustion engines, other than ship's equipment		
Subpart I — Personal Protective Equipment			
1916.81	Eye protection		
1916.82	Respiratory protection		
1916.83	Head, foot and body protection		
1916.84	Life saving equipment		
Subpart J — Ship's Machinery and Piping Systems			
1916.91	Ship's boilers		
1916.92	Ship's piping systems		
1916.93	Ship's propulsion machinery		
1916.94	Ship's deck machinery		
Subpart K — Portable, Unfired Pressure Vessels, Drums, and Containers, Other Than Ship's Equipment			
1916.101	Portable air receivers and other unfired pressure vessels		
1916.102	Drums and containers		
Subpart L — Electrical Machinery			
1916.111	Electrical circuits and distribution boards		
	Subject Index for 29 CFR 1916—Shipbuilding.		
Subpart			

Standard Affected	*Subject*	*Fed. Reg Date.*	*Action*
A			
1915.5	Incorporation by reference	9/9/09	Amended
Subpart I			
1915.153	Eye and face protection	9/9/09	Amended
1915.155	Head protection	9/9/09	Amended
1915.156	Footprotection	9/9/09	Amended
(Adopted effective August 18, 2010)			
Subpart A - General Provisions	Authority	5/14/10	Amended
Subpart Z - Toxic and Hazardous Substances			
1915.1026	Chromium (VI)	5/14/10	Amended
(Adopted effective December 14, 2010)			

Sec. 31-372-104-1917. Safety and Health Regulations for Shipbreaking

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart A	**— General Provisions**		
Section			
1917.1	Purpose, scope and responsibility		
1917.2	Definitions		
1917.3	Penalty		
1917.4	(Reserved)		
1917.5	Reference specifications, standards, and codes		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1917.6	Notification of accidents resulting in fatalities or serious injuries		
1917.7	Amendment of the regulations of this part		
Subpart B — Explosive and Other Dangerous Atmospheres			
1917.10	Competent person		
1917.11	Precautions before entering		
1917.12	Cleaning and other cold work		
1917.13	Certification before hot work is begun		
1917.14	Maintaining gas free conditions		
Subpart C — (Reserved)			
Subpart D — Welding, Cutting and Heating			
1917.31	Ventilation and protection in welding, cutting, and heating		
1917.32	Fire prevention		
1917.33	Welding, cutting and heating in way of preservative coatings		
1917.34	Welding, cutting and heating of hollow metal containers and structures not covered by § 1917.11.		
1917.35	Gas welding and cutting		
1917.36	Arc welding and cutting		
Subpart E — Scaffolds, Ladders and Other Working Surfaces			
1917.41	Scaffolds or staging		
1917.42	Ladders		
1917.43	(Reserved)		
1917.44	Access to vessels		
1917.45	Access to and guarding of dry docks and marine railways		
1917.46	Access to cargo and confined spaces		
1917.47	Working surfaces		
Subpart F — General Working Conditions			

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1917.51	Housekeeping		
1917.52	Ilumination		
1917.53	Utilities		
1917.54	Work in confined or isolated spaces		
1917.55	(Reserved)		
1917.56	Work in or on lifeboats		
1917.57	Health and sanitation		
1917.58	First aid		
Subpart G — Gear and Equipment for Rigging and Material Handling			
1917.61	Inspection		
1917.62	Ropes, chains and slings		
1917.63	Shackles and hooks		
1917.64	Chain falls and pull-lifts		
1917.65	Hoisting and hauling equipment		
1917.66	Use of gear		
1917.67	Qualifications of operators		
1917.68	Tables		
Subpart H — Tools and Related Equipment			
1917.71	General precautions		
1917.72	Portable electric tools		
1917.73	Hand tools		
1917.74	Abrasive wheels		
1917.76	Internal combustion engines, other than ship's equipment		
Subpart I — Personal Protective Equipment			
1917.81	Eye protection		
1917.82	Respiratory protection		
1917.83	Head, foot and body protection		
1917.84	Life saving equipment		
	Subject Index for 29 CFR 1917—Shipbreaking.		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
	Changes—Effective May 3, 1985		
Part 1917	Marine Terminals; Final Rule	7-5-83	New
1917.28	Hazard Communication Servicing multipiece and single piece rim wheels	8-24-87	New
1917.1	Scope and applicability	9-25-87	New
1917.44	General rules applicable to vehicles	9-25-87	Revision
(Effective June 27, 1988)			
1917.1	Scope and applicability	12-31-87	Addition
1917.72	Grain elevator terminals	12-31-87	Deletion
(Effective October 24, 1988)			
1917.28	Hazard Communication	2/9/94	Amendment
(Effective August 26, 1994)			
1917.29	Retention of DOT markings, placards and labels.	7/19/94	Amended
(Effective January 19, 1995)			
Subpart A	Scope and Definitions	07/25/97	Amend
1917.1	Scope and applicability	07/25/97	Amend
1917.2	Definitions	07/25/97	Revise
1917.3	Incorporation by reference	07/25/97	New
Subpart B	Marine Terminal Operations	07/25/97	Amend
1917.11	Housekeeping	07/25/97	New
1917.13	Slinging	07/25/97	New
1917.17	Railroad facilities	07/25/97	Revise
1917.20	Interference with communications	07/25/97	Revise
1917.23	Hazardous atmospheres and substances	07/25/97	Revise
1917.24	Carbon monoxide	07/25/97	Amend
1917.25	Fumigants, pesticides, insecticides and hazardous preservatives	7/25/97	Amend
1917.26	First aid and lifesaving facilities	7/25/97	Amend

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1917.27	Personnel	07/25/97	Amend
1917.28	Hazard communication	07/25/97	Amend
1917.30	Emergency action plans	07/25/97	New
Subpart C	Cargo Handling Gear and Equipment	07/25/97	Amend
1917.42	Miscellaneous auxiliary gear	07/25/97	Amend
1917.43	Powered industrial trucks	07/25/97	Amend
1917.44	General rules applicable to vehicles	07/25/97	Amend
1917.45	Cranes and derricks	07/25/97	Amend
1917.46	Load indicating devices	07/25/97	Amend
1917.48	Conveyors	07/25/97	Amend
1917.50	Certification of marine terminal material handling devices	07/25/97	Amend
1917.71	Terminals handling intermodal containers or roll-on roll-off operations	07/25/97	Amend
1917.73	Terminal facilities handling menhaden and similar species of fish	07/25/97	Amend
1917.91	Eye and face protection	07/25/97	Amend
1917.93	Head protection	07/25/97	Amend
1917.94	Foot protection	07/25/97	Revise
1917.95	Other protective measures	07/25/97	Amend
1917.112	Guarding of edges	07/25/97	Amend
1917.118	Fixed ladders	07/25/97	Amend
1917.119	Portable ladders	07/25/97	Amend
1917.121	Spiral staircases	07/25/97	Amend
1917.124	Dockboards (car and bridge plates)	07/25/97	Amend
1917.126	River banks	07/25/97	Amend

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1917.152	Welding, cutting and heating (hot work)	07/25/97	Amend
1917.153	Spray painting	07/25/97	Amend
1917/156	Fuel handling and storage	07/25/97	Amend
1917.157	Battery charging and changing	07/25/97	Amend
1917.1	Scope and applicability	12/01/98	Amend
(Effective November 9, 1999)			
1917	Authority	2/28/06	Amended
1917.1	Scope and Applicability	2/28/06	Amended
(Adopted effective January 2, 2007)			
1917	Authority	11/15/07	Amended
1917.96	Payment for protective equipment	11/15/07	Amended
(Adopted effective December 9, 2008)			
1917	Authority	12/12/08	Amended
Subpart A			
1917.5	Compliance duties owed to each employee	12/12/08	Amended
(Adopted effective August 11, 2009)			
1917	Authority	12/10/08	Amended
1917.71	Terminals handling intermodal containers or roll-on roll-off operations	12/10/08	Amended
(Adopted effective August 11, 2009)			
1917	Authority	9/9/09	Amended
Subpart A			
1917.3	Incorporation by reference	9/9/09	Amended
Subpart E			
1917.91	Eye and face protection	9/9/09	Amended
1917.93	Head protection	9/9/09	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1917.94	Foot protection	9/9/09	Amended
(Adopted effective August 18, 2010)			
Part 1917	Authority	6/8/11	Amended
1917.2	Definitions	6/8/11	Amended
1917.127	Sanitation	6/8/11	Amended
(Effective September 5, 2012)			
Part 1917	Authority	11/16/12	Amended
Subpart A			
1917.3	Incorporation by reference	11/16/12	Amended
Subpart E			
1917.93	Head protection	11/16/12	Amended
(Effective December 13, 2013)			

Sec. 31-372-105-1918. Safety and Health Regulations for Longshoring

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart A — General Provisions			
Section			
1918.1	Purpose and authority		
1918.2	Scope and responsibility		
1918.3	Definitions		
1918.5	(Reserved)		
1918.6	Standards incorporated by reference		
1918.7	Notification of accidents resulting in fatalities or serious injuries		
1918.8	Amendment of this part		
Subpart B — Gangways and Gear Certification			

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1918.11	Gangways		
1918.12	Gear certification		
1918.13	Certification of shore-based material handling devices		
1918.14	Container cranes		
1918.15	Effective date of §§ 1918.13 and 1918.14		
Subpart C — Means of Access			
1918.21	Gangways and other means of access		
1918.22	Jacob's ladders		
1918.23	Access to barges and river towboats		
1918.24	Bridge plates and ramps		
1918.25	Ladders		
Subpart D — Working Surfaces			
1918.31	Hatch coverings		
1918.32	Stowed cargo and temporary landing platforms		
1918.33	Deck loads		
1918.34	Skeleton decks		
1918.35	Open hatches		
1918.36	Weather deck rails		
1918.37	Barges		
1918.38	Freshly oiled decks		
Subpart E—Opening and Closing Hatches			
1918.41	Coaming clearances		
1918.42	Beam and pontoon bridles		
1918.43	Handling beams and covers		
Subpart F—Ship's Cargo Handling Gear			
1918.51	General requirements		
1918.52	Specific requirements		
1918.53	Cargo winches		
1918.54	Rigging gear		
1918.55	Cranes		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear			
1918.61	General		
1918.62	Fiber rope and fiber rope slings		
1918.63	Wire rope and wire rope slings		
1918.64	Chains and chain slings		
1918.65	Shackles		
1918.66	Hooks other than hand hooks		
1918.67	Pallets		
1918.68	Chutes, gravity conveyors and rollers		
1918.69	Powered conveyors		
1918.70	Portable stowing winches		
1918.71	Rain tents		
1918.72	Tools		
1918.73	Mechanically-powered vehicles used aboard vessels		
1918.74	Cranes and derricks other than vessel's gear		
1918.75	Notifying ship's officers before using certain equipment		
1918.76	Grounding		
Subpart H—Handling Cargo			
1918.81	Slinging		
1918.82	Building drafts		
1918.83	Stowed cargo, tiering and breaking down		
1918.84	Bulling cargo		
1918.85	Containerized cargo		
1918.86	Hazardous cargo		
Subpart I—General Working Conditions			
1918.91	Housekeeping		
1918.92	Illumination		
1918.93	Ventilation and atmospheric conditions		
1918.94	Sanitation and drinking water		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1918.95	Longshoring operations in the vicinity of repair and maintenance work		
1918.96	First aid and life saving equipment		
1918.97	Qualifications of machinery operators		
1918.98	Grain fitting		
Subpart J—Personal Protective Equipment			
1918.101	Eye protection		
1918.102	Respiratory protection		
1918.103	Protective clothing		
1918.104	Foot protection		
1918.105	Head protection		
1918.106	Protection against drowning		
Appendix I—Cargo Gear Register and Certificates			
	Subject Index for 29 CFR 1918—Longshoring.		
1918.90	Hazard Communication	8-24-87	New
(Effective June 27, 1988)			
1918.90	Hazard Communication	2/9/94	Amendment
(Effective August 26, 1994)			
1918.100	Retention of DOT markings, placards and labels.	7/19/94	Amended
(Effective January 19, 1995)			
Subpart A	Scope and Definitions	07/25/97	Revise
1918.1	Scope and application	07/25/97	Revise
1918.2	Definitions	07/25/97	Revise
1918.3	Incorporation by reference	07/25/97	Revise

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart B	Gear Certification	07/25/97	Revise
1918.11	Gear certification	07/25/97	Revise
Subpart C	Gangways and Other Means of Access	07/25/97	Revise
1918.21	General requirements	07/25/97	Revise
1918.22	Gangways	07/25/97	Revise
1918.23	Jacob's ladders	07/25/97	Revise
1918.24	Fixed and portable ladders	07/25/97	Revise
1918.25	Bridge plates and ramps	07/25/97	Revise
1918.26	Access to barges and river towboats	07/25/97	Revise
Subpart D	Working Surfaces	07/25/97	Revise
1918.31	Hatch coverings	07/25/97	Revise
1918.32	Stowed cargo and temporary landing surfaces	07/25/97	Revise
1918.33	Deck loads	07/25/97	Revise
1918.34	Other decks	07/25/97	Revise
1918.35	Open hatches	07/25/97	Revise
1918.36	Weather deck rails	07/25/97	Revise
1918.37	Barges	07/25/97	Revise
Subpart E	Opening and Closing Hatches	07/25/97	Revise
1918.41	Coaming clearances	07/25/97	Revise
1918.42	Hatch beam and pontoon bridges	07/25/97	Revise
1918.43	Handling hatch beams and covers	07/25/97	Revise
Subpart F	Vessels' Cargo Handling Gear	07/25/97	Revise
1918.51	General requirements	07/25/97	Revise
1918.52	Specific requirements	07/25/97	Revise
1918.53	Cargo winches	07/25/97	Revise
1918.54	Rigging gear	07/25/97	Revise
1918.55	Cranes	07/25/97	Revise

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart G	Cargo Handling Gear and Equipment Other Than Ship's Gear	07/25/97	Revise
1918.61	General	07/25/97	Revise
1918.62	Miscellaneous auxiliary gear	07/25/97	Revise
1918.63	Chutes, gravity conveyors and rollers	07/25/97	Revise
1918.64	Powered conveyors	07/25/97	Revise
1918.65	Mechanically powered vehicles used aboard vessels	07/25/97	Revise
1918.66	Cranes and derricks other than vessel's gear	07/25/97	Revise
1918.67	Notifying the ship's officers before using certain equipment	07/25/97	Revise
1918.68	Grounding	07/25/97	Revise
1918.69	Tools	07/25/97	Revise
Subpart H	Handling Cargo	07/25/97	Revise
1918.81	Slinging	07/25/97	Revise
1918.82	Building drafts	07/25/97	Revise
1918.83	Stowed cargo; tiering and breaking down	07/25/97	Revise
1918.84	Bulling cargo	07/25/97	Revise
1918.85	Containerized cargo operations	07/25/97	Revise
1918.86	Roll-on roll-off (Ro-Ro) operations	07/25/97	Revise
1918.87	Ship's cargo elevators	07/25/97	Revise
1918.88	Log operations	07/25/97	Revise
1918.89	Handling hazardous cargo	07/25/97	Revise
Subpart I	General Working Conditions	07/25/97	Revise
1918.90	Hazard communication	07/25/97	Revise
1918.91	Housekeeping	07/25/97	Revise
1918.92	Illumination	07/25/97	Revise
1918.93	Hazardous atmospheres and substances	07/25/97	Revise
1918.94	Ventilation and atmospheric conditions	07/25/97	Revise
1918.95	Sanitation	07/25/97	Revise

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1918.96	Maintenance and repair work in the vicinity of long-shoring operations	07/25/97	Revise
1918.97	First aid and lifesaving facilities	07/25/97	Revise
1918.98	Qualifications of machinery operators and supervisory training	07/25/97	Revise
1918.99	Retention of DOT markings, placards and labels	07/25/97	Revise
1918.100	Emergency actions plans	07/25/97	Revise
Subpart J	Personal Protective Equipment	07/25/97	Revise
1918.101	Eye and face protection	07/25/97	Revise
1918.102	Respiratory protection	07/25/97	Revise
1918.103	Head protection	07/25/97	Revise
1918.104	Foot protection	07/25/97	Revise
1918.105	Other protective measures	07/25/97	Revise
Appendix I to Part 1918	Cargo Gear Register and Certificates. (Non-mandatory)	07/25/97	Revise
Appendix II to Part 1918	Tables for Selected Miscellaneous Auxiliary Gear. (Mandatory)	07/25/97	Revise
Appendix III to Part 1918	The Mechanics of Conventional Cargo Gear. (Non-mandatory)	07/25/97	Revise
Appen	Special Cargo Gear and Container Spreader	07/25/97	Revise

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
dix IV to Part 1918	Test Requirements. (Mandatory)		
Appendix V to Part 1918	Basic Elements of a First Aid Training Program. (Non-mandatory)	07/25/97	Revise
1918.1	Scope and applicability	12/01/98	Amend
(Effective November 9, 1999)			
1918	Authority	2/28/06	Amended
1918.1	Scope and application	2/28/06	Amended
(Adopted effective January 2, 2007)			
1918	Authority	11/15/07	Amended
1918.106	Payment for protective equipment	11/15/07	Amended
(Adopted effective December 9, 2008)			
1918	Authority	12/10/08	Amended
1918.85	Containerized cargo operations	12/10/08	Amended
1918	Authority	12/12/08	Amended
1918.5	Compliance duties owed to each employee	12/12/08	Amended
(Adopted effective August 11, 2009)			
1918	Authority	9/9/09	Amended
Subpart A			
1918.3	Incorporation by reference	9/9/09	Amended
1918.101	Eye and face protection	9/9/09	Amended
1918.103	Head protection	9/9/09	Amended
1918.104	Foot protection	9/9/09	Amended
(Adopted effective August 18, 2010)			

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Part 1918	Authority	11/16/12	Amended
Appendix I			
Subpart A			
1918.3	Incorporation by reference	11/16/12	Amended
Appendix I			
Subpart J			
1918.103	Head protection	11/16/12	Amended

(Effective December 13, 2013)

Sec. 31-372-106-1919. Gear Certification

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart A—General Provisions			
Section			
1919.1	Purpose and scope		
1919.2	Definition of terms		
Subpart B—Procedure Governing Accreditation			
1919.3	Application for accreditation		
1919.4	Action upon application		
1919.5	Duration and renewal of accreditation		
1919.6	Criteria governing accreditation to certificate vessels' cargo gear		
1919.7	Voluntary amendment or termination of accreditation		
1919.8	Suspension or revocation of accreditation		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart A—General Provisions			
1919.9	Reconsideration and review		
Subpart C—Duties of Persons Accredited to Certificate Vessels' Cargo Gear			
1919.10	General duties; exemptions		
1919.11	Recordkeeping and related procedures concerning records in custody of accredited persons		
1919.12	Recordkeeping and related procedures concerning records in custody of the vessel		
Subpart D—Certification of Vessels' Cargo Gear			
1919.13	General		
1919.14	Initial tests of cargo gear and tests after alterations, renewals or repairs		
1919.15	Periodic tests, examinations and inspections		
1919.16	Heat treatment		
1919.17	Exemptions from heat treatment		
1919.18	Grace periods		
1919.19	Gear requiring welding		
1919.20	Damaged components		
1919.21	Marking and posting of safe working loads		
1919.22	Requirements governing braking devices and power sources		
1919.23	Means of derrick attachment		
1919.24	Limitations on use of wire rope		
1919.25	Limitations on use of chains		
Subpart E—Certification of Vessels: Tests and Proof Loads; Heat Treatment; Competent Persons			
1919.26	Visual inspection before tests		
1919.27	Unit proof tests—winches, derricks and gear accessory thereto		
1919.28	Unit proof tests—cranes and gear accessory thereto		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart A—General Provisions			
1919.29	Limitations on safe working loads and proof loads		
1919.30	Examinations subsequent to unit tests		
1919.31	Proof tests—loose gear		
1919.32	Specially designed blocks and components		
1919.33	Proof tests—wire rope		
1919.34	Proof tests after repairs or alterations		
1919.35	Order of tests		
1919.36	Heat treatment		
1919.37	Competent persons		
Subpart F—Accreditation to Certificate Shore-Based Equipment			
1919.50	Eligibility for accreditation to certificate shore-based material handling devices covered by § 1918.13 of the safety and health regulations for longshoring		
1919.51	Provisions respecting application for accreditation, action upon the applications, and related matters		
Subpart G — Duties of Persons Accredited to Certificate Shore-Based Material Handling Devices			
1919.60	General duties, exemptions		
Subpart H — Certification of Shore-Based Material Handling Devices			
1919.70	General provisions		
1919.71	Unit proof test and examination of cranes		
1919.72	Annual examination of cranes		
1919.73	Unit proof test and examination of derricks		
1919.74	Annual examination of derricks		
1919.75	Determination of crane or derrick safe working loads and limitations in absence of manufacturer’s data		

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Subpart A—General Provisions			
1919.76	Safe working load reduction		
1919.77	Safe working load increase		
1919.78	Nondestructive examinations		
1919.79	Wire rope		
1919.80	Heat treatment		
1919.81	Examination of bulk cargo loading or discharging spouts or suckers		
1919.90	Documentation		
(Effective February 11, 1980)			
Part 1918	Authority	6/8/11	Amended
1918.2	Definitions	6/8/11	Amended
1918.95	Sanitation	6/8/11	Amended
(Effective September 5, 2012)			

Subpart Index for 29 CFR 1919—Gear Certification.

Sec. 31-372-106-1919. Gear certification			
Part 1919	Authority	6/8/11	Amended
1919.6	Criteria governing accreditation to certificate vessels' cargo gear	6/8/11	Amended
1919.11	Recordkeeping and related procedures concerning records in custody of accredited persons	6/8/11	Amended
1919.12	Recordkeeping and related procedures concerning records in custody of the vessel	6/8/11	Amended
1919.15	Periodic tests, examinations and inspections	6/8/11	Amended
1919.18	Grace periods	6/8/11	Amended
(Effective September 5, 2012)			

Title 29, Chapter XVII, Part 1926 as published in the Federal Register, Volume 39, Number 122, June 24, 1974.

Sec. 31-372-107-1926. Safety and health standards for construction industry

Adopt as Section 31-372-107-1926., U. S. Department of Labor, Occupational Safety and Health Administration, 29 CFR Part 1926. Safety and Health Regulations for Construction with 29 CFR Part 1910. General Industry Safety and Health Regulations Identified as Applicable to Construction; revised to and published on February 9, 1979 in Book 2 of the Federal Register Volume 44—No. 29, 2-9-79.

Also, adopt the following amendment to Section 31-372-107-1926.:

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.	Safety and Health Standards for the Construction Industry	4-6-79	Corrections
(Effective February 11, 1980)			
1926.500	Guarding of Low-Pitched-Roof Perimeters During the Performance of Built-Up Roofing Work	11-14-80	Amendment
(Effective October 29, 1981)			
1926.55	Gas, vapors, fumes, dusts and mists	6-20-86	Revised
1926.58	Asbestos, tremolite, anthophyllite and actinolite	6-20-86	New
(Effective November 24, 1986)			
1926.151	Fire Prevention	7-11-86	Amendment
1926.152	Flammable and Combustible Liquids	7-11-86	Revision
1926.351	Arc Welding and Cutting	7-11-86	Revision
1926.803	Compressed Air	7-11-86	Revision
Subpart K of 29 CFR 1926	Electrical	7-11-86	Revision
(Effective April 29, 1987)			
1926.58	Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Corrections and Information Collection Requirements Approval	5-12-87	Amendment
(Effective February 25, 1988)			
1926.59	Hazard Communication	8-24-87	New
	Revision of Construction Industry Text and Inspection Records		
1926.550	Cranes and derricks	9-28-87	Revision

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.552	Material hoists, personnel hoists and elevators	9-28-87	Revision
1926.903	Underground transportation of explosives	9-28-87	Revision
(Effective June 27, 1988)			
1926.55	Gases, vapors, fumes, dusts and mists	12-4-87	New
(Effective July 27, 1988)			
Subpart Q	Concrete and Masonry Construction	6-16-88	Revision
1926.700	Scope, application and definitions applicable to this subpart.		
1926-701	General Requirements		
1926-702	Requirements for equipment and tools		
1926-703	Requirements for cast-in-place concrete		
1926-704	Requirements for pre cast concrete		
1926-705	Requirements for lift-slab operations		
1926-706	Requirements for masonry construction		
1926-550	Crane or Derrick Suspended Personnel Platforms; paragraphs (g)	8-2-88	New
1926-58	Asbestos, tremolite, anthophyllite and actinolite	9-14-88	Revision
(Effective March 23, 1989)			
Subpart P-Excavation			
1926.650	Scope, application and definitions applicable to this subpart	10/31/89	Revision
1926.651	General requirements		
1926.652	Requirements for protective systems		
1926.704	Concrete and Masonry Construction Safety Standards	10/05/89	Correction of technical error
(Effective June 22, 1990)			

Tools—Hand and Power—Construction

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.305	Jacks—lever and ratchet, screw and hydraulic	10-18-90	Amended
	Concrete and Masonry Construction		
1926.700	Scope, application and definitions applicable to this subpart	10-18-90	Amended
1926.705	Requirements for lift-slab construction operations		Revised
	Safety Standards for Stairways and Ladders Used in the Construction Industry		
Heading	Subpart L	11-14-90	Revised
1926.450	Ladders		Removed
1926.452	Definitions		Amended
Heading	Subpart M		Revised
1926.500	Guardrails, handrails and covers		Amended
1926.501	Stairways		Removed
Heading	Subpart X	11-14-90	Revised
1926.1050	Scope, application and definitions applicable to this subpart		Revised
1026.1051	General requirements		Revised
1926.1052	Stairways		New
1926.1053	Ladders		New
1926.1054—1926.1059			Reserved
1926.1060	Training requirements		New
	Safety Standards for Stairways and Ladders Used in the Construction Industry		
1926.1050	Scope, application and definitions	1-23-91	Correction
1926.1051	General requirements		Correction
1926.1053	Ladders		Correction
(Effective November 29, 1991)			
1926.1052	Stairways	8/23/91	Revision
1926.1053	Ladders	8/23/91	Revision

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
(Effective April 28, 1992)			
1926.58	Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite	6/8/92	Amended
1926.58	Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite	6/30/92	Correction
(Effective July 2, 1993)			
1926.63	Occupational Exposure to Cadmium	9/14/92	New
1926.60	Occupational Exposure to 4, 4' Methylenedianiline (MDA)	8/10/92	New
1926.60	Occupational Exposure to 4, 4' Methylenedianiline (MDA)	11/3/92	Amended
(Effective July 21, 1993)			
1926.62	Lead	5/4/93	New
(Effective January 27, 1994)			
1926.59	Hazard Communication	2/9/94	Amendment
(Effective August 26, 1994)			
1926.61	Retention of DOT markings, placards and labels.	7/19/94	Amended
(Effective January 19, 1995)			
1926.104	Fall Protection	8/9/94	Removed
1926.753	Safety Nets	8/9/94	Added
	Safety Standards for Stairways and Ladders Used in the Construction Industry		
1926.105	Fall Protection	8/9/94	Removed/ Reserved
1926.107	Fall Protection	8/9/94	Amended
1926.250	General requirements for storage.	8/9/94	Revised
1926.550	Cranes and derricks.	8/9/94	Revised
1926.651	Specific excavation requirements.	8/9/94	Revised
1926.701	Fall Protection	8/9/94	Amended
1926.951	Tools and protective equipment.	8/9/94	Revised

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.500	Scope, application, and definitions applicable to this subpart.	8/9/94	Revised
1926.501	Duty to have fall protection.	8/9/94	Revised
1926.502	Fall protection systems criteria and practices.	8/9/94	Revised
1926.503	Training requirements.	8/9/94	Revised
1926.1101	Asbestos	8/10/94	Amended
(Effective February 23, 1995)			
1926.55, Appendix A	Butadiene (1,3 Butadiene)	11-04-96	Amended
(Effective June 27, 1997)			
1926.55	Appendix A	1/10/97	Revised
1926.1152	Methylene chloride	1/10/97	New
(Effective September 5, 1997)			
Subpart L	Scaffolds	08/30/96	Revised
(Effective June 27, 1997)			
1926.57	Ventilation	1/08/98	Amended
1926.62	Lead	1/08/98	Amended
1926.60	Methylenedianiline	1/08/98	Amended
1926.103	Respiratory protection	1/08/98	Revised
1926.800	Underground construction	1/08/98	Amended
1926.1101	Asbestos	1/08/98	Amended
1926.1127	Cadmium	1/08/98	Amended
Subpart C	General Safety and Health Standards	06/18/98	Amend
Subpart D	Occupational Health and Environmental Controls	06/18/98	Amend
Subpart F	Fire Protection and Prevention	06/18/98	Amend
Subpart U	Blasting and Use of Explosives	06/18/98	Amend
1926.602	Material Handling Equipment	12/01/98	Amend
(Effective November 9, 1999)			
Subpart M	Fall Protection	1/18/01	Revised

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.500	Scope, application, and definitions applicable to this subpart	1/18/01	Revised
Subpart R	Steel Erection	1/18/01	Revised
1926.750	Scope	1/18/01	Revised
1926.751	Definitions	1/18/01	Revised
1926.752	Site layout, site-specific erection plan and construction sequence	1/18/01	Revised
1926.753	Hoisting and Rigging	1/18/01	Revised
1926.754	Structural steel assembly	1/18/01	Revised
1926.755	Column anchorage	1/18/01	Revised
	Safety Standards for Stairways and Ladders Used in the Construction Industry		
1926.756	Beams and columns	1/18/01	Revised
1926.757	Open web steel joists	1/18/01	Revised
1926.758	Systems-engineered metal buildings	1/18/01	Revised
1926.759	Falling object protection	1/18/01	Revised
1926.760	Fall protection	1/18/01	Revised
1926.761	Training	1/18/01	Revised
Appendix A		1/18/01	Revised
Appendix B		1/18/01	Revised
Appendix C		1/18/01	Revised
Appendix D		1/18/01	Revised
Appendix E		1/18/01	Revised
Appendix F		1/18/01	Revised
Appendix G		1/18/01	Revised
Appendix H		1/18/01	Revised
(Effective February 27, 2002)			
Subpart G			
1926.200	Accident prevention signs and tags	9/12/02	Revised
1926.201	Signaling	9/12/02	Revised
1926.202	Barricades	9/12/02	Revised
1926.203	Definitions	9/12/02	Revised
(Adopted effective June 9, 2003)			

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926	Authority	2/28/06	Amended
1926.55	Gases, vapors, fumes, dusts and mists	2/28/06	
Appendix A to 1926.55		2/28/06	Amended
Subpart Z	Authority	2/28/06	Amended
1926.1126	Chromium (VI)	2/28/06	Added
(Adopted effective January 2, 2007)			
1926	Authority	2/28/06	Amended
Subpart W			
Appendix A		2/28/06	Added
1926.1002	Protective frames (roll-over protective structures, known as ROPS) for wheel-type agricultural and industrial tractors used in construction	2/28/06	Amended
1926.1003	Overhead protection for operators of agricultural and industrial tractors used in construction	2/28/06	Amended
(Adopted effective April 10, 2007)			
1926			
Subpart D	Authority	8/24/06	Amended
1926.60	Methylenedianiline	8/24/06	Amended
1926.62	Lead	8/24/06	Amended
Subpart Z	Authority	8/24/06	Amended
1926.1101	Asbestos	8/24/06	Amended
1926.1127	Cadmium	8/24/06	Amended
(Adopted effective September 11, 2007)			
Subpart E	Authority	11/15/07	Amended
1926.95	Criteria for personal protective equipment	11/15/07	Amended
(Adopted effective December 9, 2008)			
Subpart C	Authority	12/12/08	Amended
1926.20	General safety and health provisions	12/12/08	Amended
Subpart D	Authority	12/12/08	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.60	Methylenedianiline	12/12/08	Amended
1926.62	Lead	12/12/08	Amended
Subpart R	Authority	12/12/08	Amended
1926.761	Training	12/12/08	Amended
Subpart Z	Authority	12/12/08	Amended
1926.1101	Asbestos	12/12/08	Amended
1926.1126	Chromium (IV)	12/12/08	Amended
1926. 1127	Cadmium	12/12/08	Amended
(Adopted effective August 11, 2009)			
Subpart A - General	Authority	5/14/10	Amended
Subpart Z - Toxic and Hazardous Substances	Authority	5/14/10	Amended
1926.1126	Chromium (VI)	5/14/10	Amended
(Adopted effective December 14, 2010)			
Subpart A - General	Incorporation by reference		Added
1926.6		8/9/10	
Subpart C – General Safety and Health Provisions			Repealed
1926.31		8/9/10	
			Reserved
Subpart L – Scaffolds	Authority	8/9/10	Amended
1926.450	Scope, application, and definitions applicable to this subpart	8/9/10	Amended
Subpart M – Fall Protection	Authority	8/9/10	Amended
1926.500	Scope, application, and definitions ap	8/9/10	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
	plicable to this subpart		
Subpart DD – Cranes And Derricks Used in Demolition and Underground Construction		8/9/10	Added
1926.1500	Scope	8/9/10	Added
1926.1501		8/9/10	Added
Subpart N –	Authority	8/9/10	Amended
Subpart N – Helicopters, Hoists, Elevators, and Conveyors	Heading	8/9/10	Amended
1926.550		8/9/10	Reserved
1926.553	Base-mounted drum hoists	8/9/10	Amended
Subpart O – Motorized Vehicles, Mechanical Equipment, and Marine Operations	Authority	8/9/10	Amended
1926.600	Equipment	8/9/10	Amended
Subpart R – Steel Erection	Authority	8/9/10	Amended
1926.753	Hoisting and rigging	8/9/10	Amended
Subpart S – Underground Construction, Caissons, Cofferdams, and Compressed	Authority Underground Construction	8/9/10	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Air			
1926.800		8/9/10	Amended
Subpart T – Demolition	Authority	8/9/10	Amended
1926.856	Removal of walls, floors and material with equipment	8/9/10	Amended
1926.858	Removal of walls, floors, and material with equipment	8/9/10	Amended
Subpart V – Power Transmission and Distribution	Authority	8/9/10	Amended
1926.952	Mechanical equipment	8/9/10	Amended
Subpart X – Stairways and Ladders	Authority	8/9/10	Amended
1926.1050	Scope, application, and definitions applicable to this subpart	8/9/10	Amended
Appendix A	Designations for General Industry Standards Incorporated into Body of Construction Standards	8/9/10	Amended
Subpart AA		8/9/10	Reserved
Subpart BB		8/9/10	Reserved
Subpart CC – Cranes and Derricks in Construction		8/9/10	Added
1926.1400	Scope	8/9/10	Added
1926.1401	Definitions	8/9/10	Added
1926.1402	Ground conditions	8/9/10	Added
1926.1403	Assembly/Disassembly - selection of manufacturer or employer procedures	8/9/10	Added
1926.1404	Assembly/Disassembly - general requirements (applies to all assembly	8/9/10	Added

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
	and disassembly operations)		
1926.1405	Disassembly - additional requirements for dismantling of booms and jibs (applies to both the use of manufacturer procedures and employer procedures	8/9/10	Added
1926.1406	Assembly/Disassembly - employer procedures – general requirements	8/9/10	Added
1926.1407	Power line safety (up to 350 kV) - assembly and disassembly	8/9/10	Added
1926.1408	Power line safety (up to 350 kV) - equipment operations	8/9/10	Added
1926.1409	Power line safety (over 350 kV)	8/9/10	Added
1926.1410	Power line safety (all voltages) - equipment operations closer than the Table A zone	8/9/10	Added
1926.1411	Power line safety - while traveling under or near power lines with no load	8/9/10	Added
1926.1412	Inspections	8/9/10	Added
1926.1413	Wire rope – inspection	8/9/10	Added
1926.1414	Wire rope – selection and installation criteria	8/9/10	Added
1926.1415	Safety devices	8/9/10	Added
1926.1416	Operational aids	8/9/10	Added
1926.1417	Operation	8/9/10	Added
1926.1418	Authority to stop operation	8/9/10	Added
1926.1419	Signals – general requirements	8/9/10	Added
1926.1420	Signals – radio, telephone or other electronic transmission of signals	8/9/10	Added
1926.1421	Signals – voice signals – additional requirements	8/9/10	Added
1926.1422	Signals – hand signal chart	8/9/10	Added
1926.1423	Fall protection	8/9/10	Added
1926.1424	Work area control	8/9/10	Added
1926.1425	Keeping clear of the load	8/9/10	Added

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.1426	Free fall and controlled load lowering	8/9/10	Added
1926.1427	Operator qualification and certification	8/9/10	Added
1926.1428	Signal person qualifications	8/9/10	Added
1926.1429	Qualification of maintenance & repair employees	8/9/10	Added
1926.1430	Training	8/9/10	Added
1926.1431	Hoisting personnel	8/9/10	Added
1926.1432	Multiple-crane/derrick lifts - supplemental requirements	8/9/10	Added
1926.1433	Design, construction and testing	8/9/10	Added
1926.1434	Equipment modifications	8/9/10	Added
1926.1435	Tower cranes	8/9/10	Added
1926.1436	Derricks	8/9/10	Added
1926.1437	Floating cranes/derricks and land cranes/derricks on barges	8/9/10	Added
1926.1438	Overhead & gantry cranes	8/9/10	Added
1926.1439	Dedicated pile drivers	8/9/10	Added
1926.1440	Sideboom cranes	8/9/10	Added
1926.1441	Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less	8/9/10	Added
1926.1442	Severability	8/9/10	Added
Appendix A to Subpart CC of Part 1926 – Standard Hand Signals		8/9/10	Added
Appendix B to Subpart CC of Part 1926 – Assembly/ Disassembly: Sample Procedures for			

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
Minimizing the Risk of Unintended Dangerous Boom Movement		8/9/10	Added
Appendix C to Subpart CC of Part 1926 – Operator Certification: Written Examination: Technical Knowledge Criteria		8/9/10	Added
(Effective November 8, 2011)			
Subpart D	Authority	6/8/11	Amended
1926.51	Sanitation	6/8/11	Amended
1926.60	Methylenedianiline	6/8/11	Amended
1926.62	Lead	6/8/11	Amended
Subpart H	Authority	6/8/11	Amended
1926.251	Rigging equipment for material handling	6/8/11	Amended
Subpart Z	Authority	6/8/11	Amended
1926.1101	Asbestos	6/8/11	Amended
1926.1127	Cadmium	6/8/11	Amended
(Effective September 5, 2012)			
Subpart D	Authority	3/26/12	Amended
1926.60	Methylenedianiline.	3/26/12	Amended
1926.62	Lead.	3/26/12	Amended
1926.64	Process safety management of highly hazardous chemicals.	3/26/12	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.65	Hazardous waste operations and emergency response.	3/26/12	Amended
Subpart F	Authority	3/26/12	Amended
1926.152	Flammable liquids.	3/26/12	Amended
1926.155	Definitions applicable to this subpart.	3/26/12	Amended
Subpart Z	Authority	3/26/12	Amended
1926.1101	Asbestos.	3/26/12	Amended
1926.1126	Chromium (VI).	3/26/12	Amended
1926.1127	Cadmium	3/26/12	Amended
(Effective April 1, 2013)			
Subpart S			
1926.800	Underground construction	4/23/13	Amended
Subpart T			
1926.856	Removal of walls, floors and material with equipment	4/23/13	Amended
1926.858	Removal of steel construction	4/23/13	Amended
(Effective December 13, 2013)			
Subpart A	Authority	11/16/12	Amended
1926.6	Incorporation by reference.	11/16/12	Amended
Subpart E	Authority	11/16/12	Amended
1926.100	Head protection.	11/16/12	Amended
(Effective December 13, 2013)			
Subpart A	Authority	4/11/14	Amended
1926.6	Incorporation by reference.	4/11/14	Amended
Subpart E	Authority	4/11/14	Amended
1926.97	Electrical protective equipment.	4/11/14	New
Subpart M	Authority	4/11/14	Amended
1926.500	Scope, application and definitions applicable to this subpart.	4/11/14	Amended
Subpart V	Authority	4/11/14	Amended
Subpart V	Electrical Power Transmission and Distribution	4/11/14	Amended
1926.950	General.	4/11/14	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.951	Medical services and first aid.	4/11/14	Amended
1926.952	Job briefing.	4/11/14	Amended
1926.953	Enclosed spaces.	4/11/14	Amended
1926.954	Personal protective equipment.	4/11/14	Amended
1926.955	Portable ladders and platforms.	4/11/14	Amended
1926.956	Hand and portable power equipment.	4/11/14	Amended
1926.957	Live-line tools.	4/11/14	Amended
1926.958	Materials handling and storage.	4/11/14	Amended
1926.959	Mechanical equipment.	4/11/14	Amended
1926.960	Working on or near exposed energized parts.	4/11/14	Amended
1926.961	Deenergizing lines and equipment For employee protection.	4/11/14	Amended
1926.962	Grounding for the protection of employees.	4/11/14	Amended
1926.963	Testing and test facilities.	4/11/14	Amended
1926.964	Overhead lines and live-line barehand work.	4/11/14	Amended
1926.965	Underground electrical installations.	4/11/14	Amended
1926.966	Substations.	4/11/14	Amended
1926.967	Special conditions.	4/11/14	Amended
1926.968	Definitions.	4/11/14	Amended
Appendix B	Working on Exposed Energized Parts	4/11/14	Amended
Appendix C	Protection from Hazardous Differences in Electrical Potential	4/11/14	Amended
Appendix D	Methods of Inspecting and Testing Wood Poles	4/11/14	Amended
Appendix E	Protection from Flames and Electric Arcs	4/11/14	Amended
Appendix F	Work-Positioning Equipment Inspection Guidelines	4/11/14	Amended
Appendix G	Reference Documents	4/11/14	Amended
Subpart X	Authority	4/11/14	Amended

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.1053	Ladders.	4/11/14	Amended
Subpart CC	Authority	4/11/14	Amended
1926.1400	Scope.	4/11/14	Amended
1926.1410	Power line safety (all voltages) – equipment operations closer than the Table A zone.	4/11/14	Amended
(Effective March 10, 2015)			
1926.1427	Operator qualification and certification.	9/26/14	Amended
(Effective August 17, 2015)			
Subpart C	Authority	5/4/15	Amended
Subpart V			
1926.953	Enclosed spaces.	5/4/15	Amended
1926.968	Definitions.	5/4/15	Amended
Subpart AA			
1926.1200		5/4/15	Reserved
1926.1201	Scope.	5/4/15	New
1926.1202	Definitions.	5/4/15	New
1926.1203	General requirements.	5/4/15	New
1926.1204	Permit-required confined space program.	5/4/15	New
1926.1205	Permitting process.	5/4/15	New
1926.1206	Entry permit.	5/4/15	New
1926.1207	Training.	5/4/15	New
1926.1208	Duties of authorized entrants.	5/4/15	New
1926.1209	Duties of attendants.	5/4/15	New
1926.1210	Duties of entry supervisors.	5/4/15	New
1926.1211	Rescue and emergency services.	5/4/15	New
1926.1212	Employee participation.	5/4/15	New
1926.1213	Provision of documents to Secretary.	5/4/15	New

(Effective August 24, 2016)

Sec. 31-372-108-1928. Occupational safety and health standards for agriculture

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
	Adopt		
1928.	Occupational Exposure to Cotton Dust in Cotton Gins	6-30-78	Correction
1928.21	Superseded by new section		Delete
1928.113	Subpart I Toxic and Hazardous Substances		New
1928.113	Occupational Exposure to Cotton Dust in Cotton Gins	8-8-78	Corrections
(Effective February 11, 1980)			
	Changes		
1915.84 (b)	Lifesaving Equipment	7-10-74	Correction
(1) and (2)			
1917.84 (b)	Lifesaving Equipment	7-16-74	Correction
(1) and (2)			
1928.57	Guarding of Farm Field Equipment	3-9-76	New
1928.57	Guarding of Farm Field Equipment	3-16-76	Correction
1928.57	Guarding of Farm Field Equipment; Deferral of Effective Date	6-2-76	Amendment
1928.57	Guarding of Farm Field Equipment; Deferral of Effective Date	6-4-76	Amendment
1928.57	Guarding of Farm Field Equipment	10-22-76	Amendment
1915.59	Operations		
1916.59			
1917.59			
1918.99			
1928.21(b)	Operations		
1928.21	Applicability of General Industry Standards to Agriculture	7-29-77	Correction
(Adopted March 27, 1978)			

Standard Affected	*Subject*	*Fed. Reg. Date*	*Action*
1926.58	Asbestos, tremolite, anthophyllite and actinolite	2/5/90	Amendment and Revision
(Effective December 31, 1990)			
1928.21	Hazard Communication	2/9/94	Republish
(Effective August 26, 1994)			
1928.21	Applicable standards in Section 31-372-101-1910.	7/19/94	Amended
(Effective January 19, 1995)			
1928.21	Applicable Standards in 29 CFR Part 1910.	10/12/94	Revised
(Effective April 19, 1995)			
1928	Authority	2/28/06	Amended
Subpart C			
1928.51	Roll-over protective structures (ROPS) for tractors used in agricultural operations	2/28/06	Amended
1928.52	Protective frames for wheel-type agricultural tractors – test procedures and performance requirements	2/28/06	Added
1928.53	Protective enclosures for wheel-type agricultural tractors – test procedures and performance requirements	2/28/06	Added
Appendix B		2/28/06	Added
(Adopted effective April 10, 2007)			
Part 1928	Authority	6/8/11	Amended
1928.110	Field sanitation	6/8/11	Amended
(Effective September 5, 2012)			

Agency
Labor Department—Occupational Safety and Health Division
Subject
OCCUPATIONAL SAFETY AND HEALTH
Inclusive Sections
§§ 31-374-1—31-374-15

CONTENTS

Recording and Reporting Occupational Injuries and Illnesses

OCCUPATIONAL SAFETY AND HEALTH

Recording and Reporting Occupational Injuries and Illnesses

Sec. 31-374-1. Purpose and scope

These sections provide for recordkeeping and reporting by employers covered by the Connecticut Occupational Safety and Health Laws and Regulations, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics.

(Effective September 11, 1974)

Sec. 31-374-2. Definitions

(a) "Affected employee" means any employee who would be affected by the grant or denial of a petition submitted pursuant to section 31-374-12 of the Regulations of Connecticut State Agencies;

(b) "Commissioner" means "commissioner" as defined in subsection (a) of section 31-367 of the Connecticut General Statutes;

(c) "Employee" means "employee" as defined in subsection (e) of section 31-367 of the Connecticut General Statutes;

(d) "Employer" means "employer" as defined in subsection (d) of section 31-367 of the Connecticut General Statutes.

(Effective October 5, 1979; Amended December 27, 2001)

Sec. 31-374-3. Reporting and record keeping standard

The standard for the reporting and recording of occupational illnesses and injuries, as required by chapter 571 of the Connecticut General Statutes, shall be the standard set forth in 29 CFR part 1904, except for sections 1904.1, 1904.2, note to subpart B and non-mandatory appendix A to subpart B.

(Effective October 5, 1979; Amended December 27, 2001; Amended July 19, 2005)

Sec. 31-374-4—31-374-10. Repealed

Repealed December 27, 2001.

Sec. 31-374-11. Repealed

Repealed October 5, 1979.

Sec. 31-374-12. Petitions for recordkeeping exceptions

(a) **Submission of petition**.

An employer may submit a petition to the commissioner to maintain records in a different manner than required by sections 31-374-1 through 31-374-3, inclusive, of the Regulations

of Connecticut State Agencies. If an employer submits such a petition to the commissioner, the employer shall simultaneously provide to the affected employees and their authorized representatives a copy and summary of the petition. The employer shall inform the affected employees and their authorized representatives of their right to comment to the commissioner pursuant to subsection (b) of this section and shall provide to the affected employees and their authorized representatives a copy of section 31-374-12 of the Regulations of Connecticut State Agencies. The receipt by the employees and their authorized representatives of such information shall constitute notice for the purposes of subsection (b) of this section. The employer shall post the petition and summary in each affected place of employment in the manner required by section 31-371-2 of the Regulations of Connecticut State Agencies.

(b) **Opportunity for comment.** Affected employees or their authorized representatives may submit written data, views, or arguments concerning the petition to the commissioner not later than ten business days following the receipt of notice pursuant to subsection (a) of this section.

(c) **Contents of petition.** A petition filed pursuant to subsection (a) of this section shall include:

(1) the name and address of the employer;

(2) the address of the place or places of employment affected by the petition;

(3) The reason for the petition;

(4) A description of the recordkeeping procedures requested by the employer which description demonstrates that such procedures will result in the collection of the same information required under section 31-374-1 to 31-374-3, inclusive, of the Regulations of Connecticut State Agencies, will achieve the purposes of chapter 571 of the Connecticut General Statutes, and will not interfere with the administration of said chapter 571 of the Connecticut General Stautes;

(5) Proof that the employer has met all the requirements of subsection (a) of this section.

(Effective October 5, 1979; Amended December 27, 2001)

Sec. 31-374-13—31-374-15. Repealed

Repealed December 27, 2001.

Agency

Occupational Safety and Health Review Commission

Subject

Rules of Procedure

Inclusive Sections

§§ 31-376-1—31-376-61

CONTENTS

SUBPART F

POST HEARING PROCEDURES

SUBPART G

MISCELLANEOUS PROVISIONS

Rules of Procedure

SUBPART A

GENERAL PROVISIONS

Sec. 31-376-1. Definitions

(a) "Act" means the Connecticut Occupational Safety and Health Act Chapter 571, Public Act 73-379 as amended by Public Act 74-137.

(b) "Commission," "person," "employer," and "employee" have the meanings set forth in Section 31-367 of the Act.

(c) "Commissioner" means the Commissioner of the Connecticut Labor Department or his duly authorized representative.

(d) "Secretary" means the Secretary of the Commission

(e) "Affected employee" means an employee of a cited employer who is exposed to an alleged hazard described in the citation as a result of his assigned duties.

(f) "Hearing Officer" means an employee of the Commission appointed by the Commission and designated to hear and make a determination on any proceeding and any motion in connection therewith.

(g) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

(h) "Representative" means any person including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(i) "Citation" means a written communication issued by the Commissioner to an employer pursuant to Section 31-375 of the Act.

(j) "Notification of proposed penalty" means a written communication issued by the Commissioner to an employer pursuant to Section 31-377 of the Act.

(k) "Day" means a calendar day.

(*l*) "Working day" means all days except Saturdays, Sundays, and State holidays.

(m) "Proceeding" means any proceeding before the Commission or Hearing Officer.

(Effective December 30, 1974)

Sec. 31-376-2. Scope of rules: Applicability of Connecticut rules of civil procedure

These rules shall govern all proceedings before the Commission and Hearing Officers. In the absence of specific provisions, procedures shall be in accordance with the Connecticut Rules of Civil Procedure.

(Effective December 30, 1974)

Sec. 31-376-3. Use of gender and number

(a) Words importing the singular number may extend and be applied to the plural and vice versa.

(b) Words importing the masculine gender may be applied to the feminine gender.

(Effective December 30, 1974)

Sec. 31-376-4. Computation of time

(a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or State holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and State holidays shall be excluded in the computation.

(b) Where service of a pleading or document is by mail pursuant to Section 31-376-7 of this subpart, three days shall be added to the time allowed by these rules for the filing of a responsive pleading.

(Effective December 30, 1974)

Sec. 31-376-5. Extensions of time

Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is to be filed.

(Effective December 30, 1974)

Sec. 31-376-6. Record address

The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly in writing to the Hearing Officer or the Commission, as the case may be, and to all parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

(Effective December 30, 1974)

Sec. 31-376-7. Service and notice

(a) At the time of filing pleading or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(b) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed erected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(e) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(f) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.

(g) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

.....

(Name of employer)

Your employer has been cited by the Commissioner of Labor for violation of the Connecticut Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure. Notice of intent to participate should be sent to:

Occupational Safety and Health Review Commission
177 Columbus Boulevard
New Britain, Connecticut 06050

All papers relevant to this matter may be inspected at:

.....

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(h) The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) A copy of the notice of the hearing to be held before the Hearing Officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) A copy of the notice of the hearing to be held before the Hearing Officer shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the

date such notice is received by the employer.

(k) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with Section 31-376-20 of this part, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(*l*) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

(Effective December 30, 1974)

Sec. 31-376-8. Filing

(a) Prior to the assignment of a case to a Hearing Officer, all papers shall be filed with the Secretary. Subsequent to the assignment of a case to a Hearing Officer, and before the issuance of his decision, all papers shall be filed with the Hearing Officer. Subsequent to issuance of the decision of the Hearing Officer, all papers shall be filed with the Secretary.

(b) Unless otherwise ordered, all filings may be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

(Effective December 30, 1974)

Sec. 31-376-9. Consolidation

Cases may be consolidated on the motion of any party on the Hearing Officer's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

(Effective December 30, 1974)

Sec. 31-376-10. Severance

Upon its own motion, or on the motion of any party or intervenor, the Commission or Hearing Officer may, for good cause, order any proceeding with respect to some or all issues or parties.

(Effective December 30, 1974)

Sec. 31-376-11. Trade secrets and other confidential information

(a) Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by Section 31-381 of the Act, the Hearing Officer shall issue such orders as may be appropriate to protect the confidentiality of such matters.

(b) Interlocutory appeal from an adverse ruling under this section shall be granted as of right.

(Effective December 30, 1974)

SUBPART B

PARTIES AND REPRESENTATIVES

Sec. 31-376-12. Party status

(a) Affected employees may elect to participate as parties at any time before the commencement of the hearing before the Hearing Officer, unless, for good cause shown, the Commission or the Hearing Officer allows such election at a later time. (See also 31-376-13 below.)

(b) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the Hearing Officer. (See also 31-376-13 below.)

(Effective December 30, 1974)

Sec. 31-376-13. Intervention: Appearance by nonparties

(a) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the Hearing Officer.

(b) The petition shall set forth the interest of the petitioner in the proceeding and show that that participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

(c) The Commission or the Hearing Officer may grant a petition for intervention to such an extent and upon such terms as the Commission or the Hearing Officer shall determine.

(Effective December 30, 1974)

Sec. 31-376-14. Representatives of parties and intervenors

(a) Any party or intervenor may appear in person or through a representative.

(b) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(c) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

(d) Nothing contained herein shall be construed to require any representative to be an

attorney at law.

(e) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

(Effective December 30, 1974)

SUBPART C

PLEADINGS AND MOTIONS

Sec. 31-376-15. Form

(a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 31-376-16 which shall include the Commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(b) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). The left margin shall be 1½ inches and right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.

(c) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

(d) The Commission may refuse for filing any pleading or document which does not comply with the requirements of paragraphs (a), (b), and (c) of this section.

(Effective December 30, 1974)

Sec. 31-376-16. Caption: Titles of cases

(a) Cases initiated by a notice of contest shall be titled:

Commissioner of Labor,

Complainant

V.

(Name of Contestant)

Respondent.

(b) Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of Employer),

Petitioner

V.

Commissioner of Labor,

Respondent.

(c) The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits filed).

(d) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

(Effective December 30, 1974)

Sec. 31-376-17. Notices of contest

The Commissioner shall, within 7 days of receipt of a notice of contest, transmit the original to the Commission, together with copies of all relevant documents.

(Effective December 30, 1974)

Sec. 31-376-18. Employer contests

(a) **Complaint.**

(1) The Commissioner shall file a complaint with the Commission no later than 20 days after receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity: (i) The basis for jurisdiction; (ii) The time, location, place, and circumstances of each such alleged violation; and (iii) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation is based.

(3) Where the Commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) **Answer.**

(1) Within 15 days after service of tile complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

(Effective December 30, 1974)

Sec. 31-376-19. Petitions for modification of abatement period

(a) An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) A petition for modification of abatement date shall be filed with the Director of the Occupational Safety and Health Division of the Connecticut Labor Department who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Director. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

(3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to subpara-graphs (b) and (c). Such uncontested petitions shall become final orders pursuant to Section 31-377 (a) and (c) of the Act.

(4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted pursuant to paragraphs (c) (1) and (2) of this section by the employer, and then the Commissioner shall respond within the next following ten (10) days. Failure to respond within ten (10) days shall be interpreted as an approval of the petition.

(d) Where any petition is objected to by the Commissioner or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections will be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c) (4).

(2) The Commission shall docket and process such petitions as expedited proceedings as provided in section 31-376-52.

(3) An employer petitioning for a modification of abatement period shall have the burden

of proving that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Within ten (10) working days after the receipt of notice of the docketing by the Commission of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

(Effective April 16, 1980)

Sec. 31-376-20. Employee contests

(a) Where an employee or authorized employee representative files a notice of contest with respect to the abatement period, the Commissioner shall, within 10 days from receipt of notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) All contests under this section shall be handled as expedited proceedings as provided for in section 31-376-52.

(Effective April 16, 1980)

Sec. 31-376-21. Statement of position

At any time prior to the commencement of the hearing before the Hearing Officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file statement of position with respect to any or all issues to be heard.

(Effective December 30, 1974)

Sec. 31-376-22. Response to motions

Any partner intervener upon whom a motion is served shall have 10 days from service of motion to file a response.

(Effective December 30, 1974)

Sec. 31-376-23. Failure to file

Failure to file any pleading pursuant to these rules when due, may, in the discretion of the Commission or Hearing Officer, constitute a waiver of the right to further participation in the proceedings.

(Effective December 30, 1974)

SUBPART D

PRE-HEARING PROCEDURES AND DISCOVERY

Sec. 31-376-24. Withdrawal of notice of contest

At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the Commission.

(Effective December 30, 1974)

Sec. 31-376-25. Pre-hearing conference

(a) At any time before a hearing the Commission or Hearing Officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(b) The Commission or Hearing Officer may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

(Effective December 30, 1974)

Sec. 31-376-26. Requests for admissions

(a) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 15 days after service of the request, or within such shorter or longer time as the Commission or the Hearing Officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(b) Copies of all requests and responses shall be served on all parties in accordance with the provisions of Section 31-376-7 (a) and filed with the Commission within the time allotted and shall be a part of the record.

(Effective December 30, 1974)

Sec. 31-376-27. Discovery depositions and interrogatories

(a) Except by special order of the Commission or the Hearing Officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(b) In the event the Commission or the Hearing Officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

(Effective December 30, 1974)

Sec. 31-376-28. Failure to comply with orders for discovery

If any party or intervenor fails to comply with an order of the Commission or the Hearing

Officer to permit discovery in accordance with the provisions of these rules, the Commission or the Hearing Officer may issue appropriate orders.

(Effective December 30, 1974)

Sec. 31-376-29. Issuance of subpoenas: Petitions to revoke or modify subpoenas: Right to inspect or copy data

(a) Any member of the Commission shall, on the application of any party directed to the Commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas if filed subsequent to the assignment of the case to a Hearing Officer, shall be filed with the Hearing Officer. A Hearing Officer shall grant the application on behalf of any member of the Commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, whether ad testificandum or duces tecum, shall within 5 days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The Hearing Officer or the Commission, as the case may be, shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Hearing Officer or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the date or evidence submitted by them.

(d) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

(Effective December 30, 1974)

SUBPART E

HEARINGS

Sec. 31-376-30. Notice of hearing

Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least 10 days in advance of such hearing, except as otherwise provided in Section 31-376-52.

(Effective December 30, 1974)

Sec. 31-376-31. Postponement of hearing

(a) Postponement of a hearing ordinarily will not be allowed.

(b) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least 3 days in advance of the time set for the hearing.

(c) No postponement in excess of 30 days shall be allowed without Commission approval.

(Effective December 30, 1974)

Sec. 31-376-32. Failure to appear

(a) Subject to the provisions of paragraph (c) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Hearing Officer and to request Commission review pursuant to Section 31-376-48.

(b) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within 5 days after the scheduled hearing date.

(c) The Commission or the Hearing Officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

(Effective December 30, 1974)

Sec. 31-376-33. Payment of witness fees and mileage: Fees of persons taking depositions

Witnesses summoned before the Commission or the Hearing Officer shall be paid the same fees and mileage that are paid witnesses in the courts of Connecticut, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of Connecticut. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

(Effective December 30, 1974)

Sec. 31-376-34. Reporter's fees

Reporter's fees shall be borne by the Commission, except as provided in Section 31-376-

33.

(Effective December 30, 1974)

Sec. 31-376-35. Transcript of testimony

Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Hearing Officer before whom the matter was heard. The Hearing Officer shall promptly serve notice upon each of the parties and intervenors of such filing.

(Effective December 30, 1974)

Sec. 31-376-36. Duties and powers of hearing officers

It shall be the duty of the Hearing Officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Hearing Officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

(a) Administer oaths and affirmations;

(b) Issue authorized subpoenas;

(c) Rule upon petitions to revoke subpoenas;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Hearing Officer by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(i) Make decisions in conformity with pertinent Connecticut codes.

(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Request the parties at any time during the hearing to state their respective positions, concerning any issue in the case or theory in support thereof;

(*l*) Adjourn the hearing as the needs of justice and good administration require;

(m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

(Effective December 30, 1974)

Sec. 31-376-37. Disqualification of hearing officer

(a) A Hearing Officer may withdraw from a proceeding whenever he deems himself

disqualified.

(b) Any party may request the Hearing Officer, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Hearing Officer, the affidavit referred to in paragraph of this section is filed with due diligence and is sufficient on its face, the Hearing Officer shall forthwith disqualify himself and withdraw from the proceeding.

(d) If the Hearing Officer does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of Section 31-376-47 shall thereupon apply.

(Effective December 30, 1974)

Sec. 31-376-38. Examination of witnesses

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

(Effective December 30, 1974)

Sec. 31-376-39. Affidavits

An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

(Effective December 30, 1974)

Sec. 31-376-40. Deposition in lieu of oral testimony; application; procedures; form; rulings

(a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the Commission or the Hearing Officer, as the case may be, and shall be served on all other parties and intervenors not less than 7 days prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the Commission or the Hearing Officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the State of Connecticut.

(c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and four copies of the transcript, together with his certificate, in person or by registered mail to the Secretary at the Review Commission.

(d) The Hearing Officer shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provision of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

(Effective December 30, 1974)

Sec. 31-376-41. Exhibits

(a) All exhibits offered in evidence, shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the Hearing Officer pursuant to Section 31-376-42.

(c) Unless the Hearing Officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(d) All exhibits offered, but denied admission into evidence, shall be identified as in paragraph (a) of this section and shall be placed in a separate file designated for rejected exhibits.

(Effective December 30, 1974)

Sec. 31-376-42. Rules of evidence

Hearings before the Commission and its Hearing Officers shall be in accordance with

Chapter 54 of the Connecticut General Statutes, Uniform Administrative Procedure Act.

(Effective December 30, 1974)

Sec. 31-376-43. Burden of proof

(a) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner.

(b) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

(Effective December 30, 1974)

Sec. 31-376-44. Objections

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Hearing Officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the records. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

(Effective December 30, 1974)

Sec. 31-376-45. Interlocutory appeals; special; as of right

(a) Unless expressly authorized by these rules, rulings by the Hearing Officer may not be appealed directly to the Commission except by its special permission. Unless otherwise provided by these rules, all such rulings shall become a part of the record.

(b) Request to the Commission for special permission to appeal from such ruling shall be filed in writing within 5 days following receipt of the ruling and shall state briefly the grounds relied on.

(c) Interlocutory appeal from a ruling of the Hearing Officer shall be allowed as of right where the Hearing Officer certifies that: (1) the ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and (2) an immediate appeal from the ruling will materially expedite the proceedings. Such appeal shall also be allowed in the circumstances set forth in Section 31-376-11.

(d) Neither the filing of a petition for interlocutory appeal, nor the granting thereof as provided in paragraphs (b) and (c) of this section, shall stay the proceedings before the Hearing Officer unless such stay is specifically ordered by the Commission.

(Effective December 30, 1974)

Sec. 31-376-46. Filing of briefs and proposed findings with the hearing officer; oral argument at the hearing

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Hearing Officer. The Hearing Officer may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

(Effective December 30, 1974)

SUBPART F

POST HEARING PROCEDURES

Sec. 31-376-47. Decisions and reports of hearing officers

(a) Upon completion of any proceeding, the Hearing Officer shall prepare a decision which shall include findings of fact, conclusions of law, and an order. When a hearing is held, the decision shall comply with sections 4-179, 4-180 and 4-181 of the Connecticut General Statutes. Copies of the decision shall be mailed to all parties. Thereafter, the hearing officer shall file with the secretary of the commission at its offices at 177 Columbus Boulevard, New Britain, Connecticut, a report consisting of his decision, the record in support thereof, and any petitions for discretionary review of his decision, or statements in opposition to such petitions, that may be filed in accordance with section 31-376-48. The hearing officer shall file his report on the day following the close of the period for filing petitions for discretionary review, or statements in opposition to such petitions, but no later than the twenty-first day following the date of the mailing of the decision to the parties.

(b) Promptly upon receipt of the hearing officer's report, the secretary shall docket the case and notify all parties of that fact.

On or after the date of docketing of the case, all pleadings or other documents that may be filed in the case shall be addressed to the secretary.

In the event no commission member directs review of a decision on or before the thirtieth day following the date of docketing of the hearing officer's report, the decision of the hearing officer contained therein shall become a final order of the commission.

(Effective April 16, 1980)

Sec. 31-376-48. Discretionary Review; petitions for; statements in opposition

(a) A party aggrieved by the decision of a Hearing Officer may submit a petition for discretionary review. An aggrieved party that fails to file a petition for such review by the commission may be foreclosed from court review of any objection to the hearing officer's decision.

(1) Except as provided in subdivisions (2) and (3) of this section, any petition must be received by the hearing officer at his office on or before the twentieth day following his mailing of a copy of the decision to the parties.

(2) When there is no objection by any party, when an expedited proceeding has been directed pursuant to section 31-376-52, or for other good cause, the hearing officer is empowered to prescribe a shorter time for filing petitions for discretionary review following

the mailing of his decision.

(3) Petitions for review of a hearing officer's decision may be filed directly with the secretary subsequent to the filing of the hearing officer's report. Such petitions will be considered to the extent that time and resources permit. Parties filing such petitions should be aware that any action by a commission member directing review must be taken within thirty (30) days following the filing of the hearing officer's report.

(4) In the case of proposed settlements or other proposed dispositions by consent of all parties, petitions for discretionary review shall not be allowed, except for good cause shown.

(b) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The inclusion of precise citations to the record or legal authorities, as the case may be, will facilitate prompt review of the petition.

(c) Failure to act on such petition within the review period shall be deemed a denial thereof.

(d) Statements in opposition to petitions for discretionary review may be filed at the times and places specified in this section for the filing of petitions for discretionary review. Any statement shall contain a concise statement on each portion of the petition to which it is addressed.

(e) An original and three copies of any petition or statement shall be filed with the commission.

(Effective April 16, 1980)

Sec. 31-376-48a. Review by the commission

(a) Review is a matter of sound discretion of a member of the Commission.

(b) In exercising discretion, a Commission member will consider assertions of the following:

(1) A finding of material fact is not supported by a preponderance of the evidence.

(2) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

(3) A substantial question of law, abuse of discretion, or policy is involved.

(4) A prejudicial error of procedure was committed.

(c) When a petition for discretionary review is granted, review shall be limited to the issues specified in the petition, unless the order for review expressly provides differently.

(d) At any time within 30 days after the filing of a decision of a Hearing Officer, a case may also be directed for review by a member upon his own motion upon any ground that could be raised by a party, but the issues would normally be limited to novel questions of law or policy or questions involving conflict in Hearing Officers' decisions. Any direction for review shall state the issues with particularity. Except in extraordinary circumstances, the Commission's power to review is limited to issues of law or fact raised by the parties in the proceedings for which the review is being requested.

(Effective April 16, 1980)

Sec. 31-376-49. Stay of final order

(a) Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

(Effective December 30, 1974)

Sec. 31-376-50. Oral argument before the commission

(a) Oral argument before the Commission ordinarily will not be allowed.

(b) In the event the Commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

(Effective December 30, 1974)

SUBPART G

MISCELLANEOUS PROVISIONS

Sec. 31-376-51. Settlement

(a) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

(b) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order.

(c) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 31-376-7. Proof of such service shall accompany the proposed settlement when submitted to the Commission or the Hearing Officer.

(Effective December 30, 1974)

Sec. 31-376-52. Expedited proceeding

(a) Upon application of any party or intervenor or upon his own motion, any Commissioner may order an expedited proceeding. Contests arising under section 31-376-19 and 31-376-20, shall be placed on a special docket and treated as expedited proceedings before the commissioners or a hearing officer. Cases arising under these sections which are directed for review before the commission shall also be placed on a special docket for review, and shall be treated as expedited proceedings under this section.

(b) When such proceeding is ordered, the Secretary shall notify all parties and intervenors.

(c) The Hearing Officer assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters,

without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

(Effective April 16, 1980)

Sec. 31-376-53. Standards of conduct

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the State of Connecticut.

(Effective December 30, 1974)

Sec. 31-376-54. Ex parte communication

(a) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the Commission, including any member, officer, employee, or agent of the Commission who is employed in the decisional process, and any of the parties or intervenors.

(b) In the event such ex parte communication occurs, the Commission or the Hearing Officer may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited expert communication.

(Effective December 30, 1974)

Sec. 31-376-55. Restrictions as to participation by investigative or prosecuting officers

In any proceeding noticed pursuant to the rules in this part, the Commissioner shall not participate or advise with respect to the report of the Hearing Officer or the Commission decision.

(Effective December 30, 1974)

Sec. 31-376-56. Inspection and reproduction of documents

(a) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the Commission, inspect and copy any document filed in any proceeding.

(b) Costs shall be borne by such person.

(Effective December 30, 1974)

Sec. 31-376-57. Restrictions with respect to former employees

(a) No former employee of the Commission or the Commissioner (including a member of the Commission or the Commissioner) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

(b) No former employee of the Commission or the Commissioner (including a member of the Commission or the Commissioner) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless 1 year has elapsed since the termination of such employment.

(Effective December 30, 1974)

Sec. 31-376-58. Amendments to rules

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein.

(Effective December 30, 1974)

Sec. 31-376-59. Special circumstances: Waiver of rules

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the Commission may, upon application by any party or intervenor, or on its own motion, after 3 days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

(Effective December 30, 1974)

Sec. 31-376-60. Penalties

(a) All penalties assessed by the Commission are Civil.

(b) The Commission has no jurisdiction under Section 31-382 (e), (f), and (g) of the Act and will conduct no proceeding thereunder.

(Effective December 30, 1974)

Sec. 31-376-61. Official seal occupational safety and health review commission

Reserved.

Agency
Department of Labor

Subject
Discrimination against Employees Exercising Rights under the Connecticut Occupational Safety and Health Act of 1973

Inclusive Sections
§§ 31-379-1—31-379-22

CONTENTS

Discrimination against Employees Exercising Rights under the Connecticut Occupational Safety and Health Act of 1973

General

Sec. 31-379-1. Introduction

(a) The Connecticut Occupational Safety and Health Act of 1973 (Chapter 571, Section 31-367 through 31-385), hereinafter referred to as the Act, is a state statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the State. By terms of the Act, every person engaged in a business who has employees is required to furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further to comply with occupational safety and health standards promulgated under the Act.

(b) The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement procedures initiated by the Department of Labor, review proceedings before an independent quasi-judicial agency (the Connecticut Occupational Safety and Health Review Commission), and express judicial review are provided by the Act.

(c) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

(d) This part deals essentially with the rights of employees afforded under section 31-379 of the Act. Section 31-379 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

(Effective September 30, 1976)

Sec. 31-379-2. Purpose

The purpose of these regulations is to make available in one place interpretations of the various provisions of section 31-379 of the Act which will guide the Commissioner of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

(Effective September 30, 1976)

Sec. 31-379-3. Complaint procedure

Upon the filing of a complaint pursuant to section 31-379 of the Connecticut General Statutes, the commissioner shall proceed pursuant to section 31-379-15a of the Regulations

of Connecticut State Agencies.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-4. Persons prohibited from discriminating

Section 31-379 of the Connecticut General Statutes is not limited to actions taken by employers against their employees. A person may be charged with discriminatory action against an employee of another person. Any other person in a position to discriminate against an employee may be charged with discriminatory action, including but not limited to, organizations representing employees for collective bargaining purposes and employment agencies.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-5. Persons protected by section 31-379

(a) All employees are afforded the full protection of section 31-379. For purposes of the Act, an employee is defined as "any person engaged in service to an employer in a business of his employer." The Act does not define the term "engaged." However, the broad remedial nature of this legislation demonstrates a clear intent that the existence of an employment relationship, for purposes of section 31-379, is to be based upon economic realities rather than upon common law doctrines and concepts.

(b) For purposes of section 31-379, even an applicant for employment could be considered an employee. Further, because section 31-379 speaks in terms of any employer, it is also clear that the employer need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

(c) In view of the definitions of "employer" and "employee" contained in the Act, employees of the State or political subdivisions are within the contemplated coverage of section 31-379.

(Effective September 30, 1976)

Sec. 31-379-6. Unprotected activities

(a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of 379 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(b) To establish that a violation of section 31-379 of the Connecticut General Statutes has occurred, the employee's engagement in protected activity is not required to be the sole consideration for a discharge or other adverse action. If protected activity was a substantial reason for the action or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, a violation of section 31-379 of the Connecticut

General Statutes has occurred. Whether a discharge or other adverse action taken against the complainant by a person was because of protected activity shall be determined on the basis of the facts in the particular case.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-7—31-379-8. Reserved

Specific Protections

Sec. 31-379-9. Complaints under or related to the Act

(a) Discharge of, or discrimination against, an employee because the employee has filed "any complaint — under or related to this Act —" is prohibited by section 31-379. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to section 31-374 (f). However, this would not be the only type of complaint protected by section 379. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

(b) Complaints registered with other state or local agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to Federal agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be protected against discharge or discrimination caused by a complaint to the employer.

(Effective September 30, 1976)

Sec. 31-379-10. Proceedings under or related to the Act

(a) Proceedings under or related to this chapter include, but are not limited to, inspections of worksites pursuant to section 31-374 of the Connecticut General Statutes, the contesting by an employee of an abatement date pursuant to subsection

(b) of section 31-377 of the Connecticut General Statutes, an employee's initiation of proceedings for promulgation of an occupational safety and health standard pursuant to section 31-372 of the Connecticut General Statutes, an employee's application for modification or revocation of a variance pursuant to subsection (g) of section 31-372 of the Connecticut General Statutes, an employee's judicial challenge to a standard pursuant to subsection (h) of section 31-372 of the Connecticut General Statutes and an employee's appeal of an Occupational Safety and Health Review Commission order pursuant to section 31-378 of the Connecticut General Statutes.

(c) An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-11. Testimony

An employee's testimony in any proceeding under or related to chapter 571 of the Connecticut General Statutes is protected by section 31-379 of the Connecticut General Statutes. This protection is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but extends to any statements given in the course of judicial, quasi-judicial, and administrative proceedings.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-12. Exercise of any right afforded by the Act

(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 379 also protects employees from discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (section 31-377). Certain other rights exist by necessary implication. For example, employees may request information from the Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b) (1) On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to section 31-374 (f) of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of section 379 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

(2) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger

of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

(Effective September 30, 1976)

Sec. 31-379-13—31-379-14. Reserved

Procedures

Sec. 31-379-15. Filing of complaint for discrimination

(a) **Who may file.** A complaint pursuant to section 31-379 of the Connecticut General Statutes may be filed in writing by the employee or the employee's designated representative.

(b) **Place of filing.** The complaint shall be filed with the labor commissioner no later than one-hundred eighty days after the alleged violation.

(c) If a complaint is filed beyond the one hundred-eighty day period, such period may be tolled by the commissioner on the basis of equity or because of compelling extenuating circumstances, including but not limited to, instances when the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action or instances when the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or the filing of a complaint with another agency are circumstances which shall not toll the one hundred-eighty day period. In the absence of circumstances justifying a tolling of the one hundred-eighty day period, untimely complaints shall not be processed.

(Effective July 9, 1987; Amended December 6, 2001)

Sec. 31-379-15a. The prehearing and hearing process

(a) Upon receipt of the complaint, the Commissioner shall schedule a prehearing conference pursuant to section 31-1-3 of the Regulations of Connecticut State Agencies to be held no later than one month from the date of receipt of the complaint.

(b) If the prehearing conference fails to result in a successful resolution of the complaint, the Commissioner shall promptly schedule and conduct a contested case hearing, pursuant to the Uniform Administrative Procedure Act, Chapter 54 of the Connecticut General Statutes, and the Department of Labor's contested case regulations, Sections 31-1-1 through 31-1-9, inclusive, of the Regulations of Connecticut State Agencies.

(Adopted effective December 6, 2001)

Sec. 31-379-16. Proposed and final decision

(a) Not later than sixty days after the close of evidence, or the filing of briefs, whichever is later, the hearing officer designated to preside over the contested case hearing shall issue a proposed decision pursuant to sections 31-1-1 through 31-1-9, inclusive, of the

Regulations of Connecticut State Agencies and shall notify the parties that any party adversely affected by the proposed decision may file exceptions, present briefs, or request oral argument no later than two weeks from the date of the proposed decision. If the designated hearing officer finds in favor of the complainant, the decision shall contain an award to the complainant of all appropriate relief pursuant to subsection (c) of section 31-379 of the Connecticut General Statutes.

(b) The commissioner shall issue a final decision pursuant to sections 31-1-1 through 31-1-9, inclusive, of the Regulations of Connecticut State Agencies no later than thirty days from the date the proposed decision was issued or no later than thirty days from the receipt of exceptions or the presentation of briefs or the hearing of oral argument, whichever is later.

(Effective September 30, 1976; Amended December 6, 2001)

Sec. 31-379-17. Withdrawal of complaint

Enforcement of the provisions of section 31-379 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Commissioner's investigation. The Commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

(Effective September 30, 1976)

Sec. 31-379-18. Arbitration or other agency proceedings

(a) **General.**

(1) An employee who files a complaint under section 31-379 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Commissioner's jurisdiction to entertain section 31-379 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Commissioner may file action in the court of common pleas for Hartford county regardless of the pendency of other proceedings.

(2) However, the Commissioner also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 31-379 complaints.

(3) Where a complainant is in fact pursuing remedies other than those provided by section 31-379, postponement of the Commissioner's determination and deferral to the results of such proceedings may be in order.

(b) **Postponement of determination.** Postponement of determination would be justified

where the rights asserted in other proceedings are substantially the same as rights under section 31-379 and those proceedings are not likely to violate the rights guaranteed by section 31-379. The factual issues in such proceedings must be substantially the same as those raised by section 31-379 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(c) **Deferral to outcome of other proceedings.** A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without ajudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 31-379 complaint.

(Effective September 30, 1976)

Sec. 31-379-19—31-379-20. Reserved

Some Special Subjects

Sec. 31-379-21. Walkaround pay disputes

The commissioner recognizes the essential nature of employee participation in walkaround inspections under section 31-374 of the act. Employees constitute a vital source of information to representatives of the commissioner concerning the presence of workplace hazards. Employees should be able to freely exercise their statutory right to participate in walkarounds without fear of economic loss, such as the denial of pay for the time spent assisting OSHA compliance personnel during workplace inspections. Therefore, in order to insure the unimpeded flow of information to the commissioner's inspectors, as well as the unfettered statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time during which they are engaged in walkaround inspections, is discriminatory under section 31-379. In addition, where employees participate in other inspection related activities, such as responding to questions of compliance officers, or participating in the opening and closing conferences, an employer's failure to pay employees for time engaged in these activities, is discriminatory under section 31-379.

(Effective October 5, 1979)

Sec. 31-379-22. Employee refusal to comply with safety rules

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily

be regarded as discriminatory action prohibited by section 31-379. This situation should be distinguished from refusals to work, as discussed in 31-379-12.

(Effective September 30, 1976)

Agency
Department of Labor

Subject
Emergency Municipal Public Works Employment Program

Inclusive Sections
§§ 31-390(b)-1—31-390(b)-6

CONTENTS

Emergency Municipal Public Works Employment Program

Sec. 31-390(b)-1. Purpose

The purpose of these regulations is to implement Sections 31-386 to 31-391 of the Connecticut General Statutes, more commonly known as the Emergency Municipal Public Works Employment Act.

(Effective June 8, 1979)

Sec. 31-390(b)-2. Authority

These regulations are authorized pursuant to Section 31-390 (b) delegating to the Commissioners of Administrative Services, Economic Development, Labor, and the Secretary of the Office of Policy and Management authority to adopt regulations in the implementation of Sections 31-386 to 31-391.

(Effective June 8, 1979)

Sec. 31-390(b)-3. Eligibility

Any municipality with an unemployment rate equal to or in excess of seven percent of its work force as of March 1975, as certified by the Commissioner of Labor, shall be eligible for state financial assistance subject to the approval of the commissioners.

(Effective June 8, 1979)

Sec. 31-390(b)-4. Projects

(a) No emergency municipal Public Works employment project is to exceed an estimated cost of five hundred thousand dollars, unless in the discretion of the commissioners, a project exceeding five hundred thousand dollars particularly fulfills the purpose of Sections 31-386 to 31-391; and

(b) Construction on said project may begin within seventy-five days of final approval.

(Effective June 8, 1979)

Sec. 31-390(b)-5. Deadline

Applications on approved forms will be accepted no later than November 15, 1975.

(Effective June 8, 1979)

Sec. 31-390(b)-6. Amendments to estimated cost of specifications

Projects previously submitted based on an original estimated cost or work specification may be amended or altered only upon the approval in contract form by the commissioners and the municipal applicant.

(Effective June 8, 1979)

Agency

Department of Labor

Subject

Approval of a Medical Facility other than a General Hospital as an Auxiliary Occupational Health Clinic

Inclusive Sections

§§ 31-401-1—31-401-4

CONTENTS

Approval of a Medical Facility other than a General Hospital as an Auxiliary Occupational Health Clinic

Sec. 31-401-1. Definitions

As used in Sections 31-401-1 to 31-401-4, inclusive:

(a) "Commissioner" means the Labor Commissioner of the State of Connecticut whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, or his designee.

(b) "Labor Department" means the state of Connecticut Labor Department.

(c) "Auxiliary Occupational Health Clinic" means any general hospital, or any other medical facility which operates a corporate medicine program or an employee wellness program which includes any of the following:

(1) Routine commercial activities, such as preemployment examinations,

(2) Mandated examinations, such as Federal Occupational Safety and Health Administration examinations,

(3) Routine workers' compensation cases,

(4) Routine medical evaluations involving establishment of product liability,

(5) Evaluations consigned to independent medical examiners,

(6) Employee physical programs,

(7) Employee wellness programs,

(8) Employee drug testing programs.

(d) "Medical facility other than a general hospital" means a medical facility which operates a corporate medicine program or an employee wellness program which includes any of the following:

(1) routine commercial activities, such as preemployment examinations,

(2) mandated examinations, such as Federal Occupational Safety and Health Administration examinations,

(3) routine workers' compensation cases,

(4) routine medical evaluations involving establishment of product liability,

(5) evaluations consigned to independent medical examiners,

(6) employee physical programs,

(7) employee wellness programs,

((8))

(Effective December 30, 1991)

Sec. 31-401-2. Request by a medical facility other than a general hospital for approval by the commissioner

(a) A medical facility other than a general hospital shall make a written request for approval by the Commissioner as an auxiliary occupational health clinic for the purpose of Conn. Gen. Stat. Section 31-398. Such request should be mailed to:

Director

State of Connecticut
Occupational Safety and Health
200 Folly Brook Boulevard
Wethersfield, Connecticut 06109

(b) Any such request shall include (1) certification that such medical facility operates a corporate medicine program or an employee wellness program which includes any of the following: (A) routine commercial activities, such as preemployment examinations, (B) mandated examinations, such as Federal Occupational Safety and Health Administration examinations, (C) routine workers' compensation cases, (D) routine medical evaluations involving establishment of product liability, (E) evaluations consigned to independent medical examiners, (F) employee physical programs, (G) employee wellness programs, or (H) employee drug testing programs, and (2) evidence that such facility is subject to and is in substantial compliance with Sec. 31-40a Conn. Gen. Stats.

(Effective December 30, 1991)

Sec. 31-401-3. Determination by the commissioner

Not later than ninety (90) days after the receipt of the request, the Commissioner shall make a determination and shall furnish a copy of such determination to the medical facility other than a general hospital.

(Effective December 30, 1991)

Sec. 31-401-4. Review of commissioner's determination

The Commissioner may upon receipt of a written request, which shall include argument and/or evidence for review, review any previous determination. This section shall not be interpreted to require such a review.

(Effective December 30, 1991)