

The Regulations of Connecticut State Agencies are amended by adding sections 31-49p-1 to 31-49p-10, inclusive, as follows:

(NEW) Section 31-49p-1. Definitions

- (1) “Authority” has the same meaning as provided in section 31-49e of the Connecticut General Statutes.
- (2) “Address” means the United States Postal Service mailing address or the electronic address designated by a party for receipt of notices regarding the party’s appeal.
- (3) “Appellant” means a covered employee or covered public employee as defined in section 31-49e of the Connecticut General Statutes who files an appeal pursuant to section 31-49p of the Connecticut General Statutes.
- (4) "Commissioner" means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut, 06109, or the Commissioner’s designee.
- (5) “File record” has the same meaning as provided in section 31-49p of the Connecticut General Statutes.
- (6) “Party” means the following parties to an appeal, if aggrieved or potentially aggrieved by the determination of the appeal:
 - (A) an Appellant;
 - (B) an Employer that has been approved by the Authority to meet its obligations under 31-49e to 31-49t, inclusive, of the Connecticut General Statutes through a Private plan;
 - (C) a Third-party administrator; and
 - (D) the Authority.
- (7) “Private plan” means a private plan approved pursuant to section 31-49o of the Connecticut General Statutes.
- (8) “Program” has the same meaning as provided in section 31-49e of the Connecticut General Statutes.
- (9) “Third-party administrator” means an individual or entity, other than an Employer, who administers or assists in administering a Private plan for an Employer.

(NEW) Section 31-49p-2. Appeal processing

- (a) Each appeal to the Commissioner filed pursuant to section 31-49p of the Connecticut General Statutes through a mechanism specified by the Commissioner.
- (b) To be acceptable as timely filed, an appeal must be received by the Commissioner no later than the twenty-first (21) calendar day following the issuance of the denial or penalty decision issued pursuant to section 31-49p of the Connecticut General Statutes, or must bear a legible United States postal service postmark which indicates that within such twenty-one (21) calendar day period it was placed in the possession of the postal authorities for delivery to the appropriate office. If said twenty-first (21) calendar 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.
- (c) Immediately upon receipt of an appeal to the Commissioner, the Commissioner shall:
 - (1) notate the date such appeal was received by the Commissioner and the date of any United States postal service postmark;
 - (2) obtain the File record for any penalty decision or denial decision if such decision was issued by the Authority;
 - (3) obtain the File record from an Employer or its Third-party administrator for any denial decision if such denial decision was issued by such Employer or a Third-party administrator pursuant to a Private plan; and
 - (4) promptly send or make available a copy of such File record to the Appellant.
- (d) The Authority, an Employer or its Third-party administrator shall provide to the Commissioner the File record not later than the fifteenth (15) calendar day following the Commissioner's request for such File record pursuant to subsection (c) of this section, through a mechanism specified by the Commissioner.

(NEW) Section 31-49p-3. Request for hearing; supplementing the record

- (a) The Commissioner may decide an appeal based on the File record obtained from the Authority, Employer, or Third-party administrator.
- (b) If the Commissioner determines that the ends of justice so require, the Commissioner may order that a hearing be scheduled for such purposes as the Commissioner may direct. Each appeal may include a statement requesting the Commissioner to order the scheduling of a 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) 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;
 (3) describe each other reason, if any, to support the Party's request for the scheduling of a hearing.

(c) If the Commissioner orders a hearing, advance notice of the hearing, and the attendant rights and responsibilities of the Parties concerning such hearing, shall be sent to the Parties. If the Commissioner denies such request, the decision on the appeal shall specifically indicate the basis for the denial of a hearing.

(d) The Commissioner may supplement the record in any case in which the Commissioner deems the File record on review to be incomplete or deficient, or where the Commissioner determines that further evidence would be relevant to the Commissioner's determination. Each appeal may include a statement requesting the Commissioner to supplement the record. Each such request shall describe or include the evidence that it seeks to include in the record, explain the importance of such evidence and state how such evidence is likely to affect the outcome of the case. The Commissioner may, on the Commissioner's own motion, request any Party to provide such evidence or argument as the Commissioner may direct. In any case in which the Commissioner supplements the record, all parties shall be allowed a reasonable opportunity to object to the filing of additional evidence or argument, offer evidence or argument in rebuttal, or request a hearing.

(NEW) Section 31-49p-4. Untimely appeal; lack of aggrievement; moot appeal; dismissal

(a) Upon receipt of any appeal over which the Commissioner determines that no jurisdiction exists 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 Commissioner shall assign such appeal a case number and, unless the Commissioner determines that a hearing is necessary, thereafter issue a decision dismissing such appeal. The Commissioner's determination of such jurisdictional issues may be based solely upon review and consideration of the evidence in the File record concerning such jurisdictional issues. Such dismissal decisions shall contain findings of fact and conclusions of law concerning the jurisdictional issues involved.

(b) Where the Appellant alleges good cause for the untimely filing of an appeal, the Commissioner may conduct a hearing on the issue of good cause. For purposes of this section, a Party has good cause for filing the Party's appeal more than twenty-one (21) calendar days after the issuance of the denial or penalty decision pursuant to section 31-49p of the Connecticut General Statutes 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 Commissioner shall consider all relevant factors, including but not limited to:

- (1) Whether the Party was represented;
- (2) Whether the Party received timely and adequate notice of the need to act;
- (3) Administrative error;
- (4) Factors outside the control of the Party which prevented a timely action;
- (5) The Party's physical or mental impairment;

- (6) Whether the Party acted diligently in filing an appeal once the reason for the late filing no longer existed;
- (7) The total length of time that the action was untimely; and
- (8) Good faith error, provided that in determining whether good faith error constitutes good cause, the Commissioner shall consider 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.

(NEW) Section 31-49p-5. Timely appeal; notice of appeal

- (a) Upon receipt of a timely filed appeal, the Commissioner shall promptly send to all Parties at their Addresses of record a written notice of appeal which shall acknowledge the receipt of such appeal and contain an announcement of the rights of each Party pursuant to subsection (b) of this section.
- (b) Any Party may, within ten (10) calendar days following issuance of the notice of appeal, file with the Commissioner written argument, a request to supplement the written record, or a request for a hearing pursuant to section 31-49p-3 of the Regulations of Connecticut State Agencies. Upon the request from a Party to such proceeding or the attorney for such Party, the Commissioner may grant a limited extension of time in which to file further written argument.
- (c) Any Party to an appeal may be represented by an attorney provided that the cost of representation shall be the expense of the Party obtaining such representation.

(NEW) Section 31-49p-6. Withdrawals; dismissal

- (a) The Appellant may request withdrawal of the Appellant's appeal to the Commissioner and the Commissioner 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 Appellant or the attorney for such Party, and (3) the request is received prior to the issuance of a decision on such appeal. A withdrawal request received after the issuance of a decision on the appeal may be treated by the Commissioner as a motion to reopen the decision.
- (b) The Commissioner shall reopen a dismissal decision and reinstate a withdrawn appeal, without the requirement of finding good cause, if the Appellant files a motion to reopen prior to the Commissioner's withdrawal decision becoming final.

(NEW) Section 31-49p-7. Stipulations; official notice

- (a) The Parties to an appeal before the Commissioner may stipulate to facts.
- (b) The Commissioner may take official notice of judicially cognizable facts and generally recognized, technical, or scientific facts. Any facts officially noticed shall be specifically identified as such in the decision. Any Party who (1) is aggrieved by a decision which incorporates a fact which was officially noticed by the Commissioner but not specifically addressed at a hearing ordered pursuant to section 31-49p-3 of the Regulations of Connecticut State Agencies and (2) disputes such fact officially noticed, may file a motion to reopen such case for purposes of scheduling an evidentiary hearing on such officially noticed fact.

(NEW) Section 31-49p-8. Hearing

- (a) Hearings may be scheduled and conducted for such limited purposes as the Commissioner may direct pursuant to section 31-49p-3 of the Regulations of Connecticut State Agencies and may be limited exclusively to oral argument. Any such hearing will be conducted by telephone or other electronic means, except that the Commissioner has the discretion to prescribe an in-person hearing.
- (b) Written notice of any hearing scheduled shall be sent to each Party's Address of record, and to the attorney of record for such Party, not less than fifteen (15) calendar days prior to the scheduled hearing date, provided the Parties may waive such notice or agree to a shorter period in advance of hearing for receiving such notice. A hearing may be rescheduled at the initiative of the Commissioner or upon the request of a Party or the attorney 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.
- (c) Subject to the Commissioner's right to determine the scope of any hearing ordered and to control the admission of testimony and evidence, it is the responsibility of each Party to present all witnesses, testimony, evidence, and argument material to such Party's contentions concerning the appeal. The Commissioner may order the Parties to provide, in advance of any hearing, a list of any witnesses that the Party intends to produce at such hearing and a copy of any documentary evidence that the Party intends to submit at such hearing. The Commissioner may refuse to provide a further hearing for purposes of presenting testimony, evidence or oral argument not presented at the Commissioner's hearing ordered 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.
- (d) The Commissioner shall prepare or arrange to have prepared, a recording susceptible to transcription, of all proceedings at any hearing.
- (e) The Commissioner shall conduct and control any hearing the Commissioner orders. The Commissioner shall not be bound by the ordinary common law or statutory rules of evidence or procedure. Subject to the purposes of the hearing, the Commissioner shall make inquiry in such manner, through oral testimony and written and printed records, and take any action consistent with the impartial discharge of 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 Commissioner may, at any time, examine or cross-examine any Party or witness, and require the attendance of witnesses, production of documents or such other evidence as the Commissioner determines to be necessary for a proper and complete decision. The Commissioner shall determine the order for presentation of evidence and may exclude testimony and evidence which the Commissioner determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper.

- (f) The Commissioner has authority to administer oaths and affirmations. All testimony at any hearing shall be under oath or affirmation. Any interpreter participating in such hearing shall so interpret under the separate oath for interpreters.
- (g) Individuals with limited English proficiency, or who are deaf or hearing impaired, shall have the right to request an interpreter provided by the Connecticut Department of Labor. The Commissioner may require the use of an interpreter for any person who cannot adequately speak or understand spoken English and for whom a capable interpreter has not been requested.
- (h) Any document entered into the record that is written in a language other than English shall be interpreted at the hearing by a competent interpreter or accompanied by a correct English translation with proof satisfactory to the Commissioner that such translation is a correct translation of the original document.
- (i) Any Party or witness may request a reasonable accommodation that is necessary to allow that individual to participate in any hearing that may be ordered by the Commissioner.
- (j) The hearing shall be confined to the purposes and issues listed on the notice of hearing issued pursuant to this section.
- (k) If any Party seeks to introduce at such hearing any documentary evidence or material of which the Appellant or any other Party has not, at the time of the hearing, yet received a copy, the Commissioner shall require a specific identification of such material and an explanation of the alleged importance of such documentary evidence or material to the appeal involved. The Commissioner may exclude such documentary evidence or material unless the Commissioner determines that such material is critical to the determination of the appeal. The Commissioner may: (1) if practicable, permit such documentary evidence or material to be read into the record provided that such documentary evidence or material shall thereafter be filed with the Commissioner and all other parties in accordance with the time limitation that the Commissioner may reasonably direct; (2) if the Commissioner deems it necessary and appropriate, reschedule the hearing; or (3) take such other action as the Commissioner deems appropriate.
- (l) The Commissioner shall not permit improper behavior or tactics that are disruptive to the fair, orderly or effective conduct of the hearing. Any person other than a Party who engages in such improper conduct shall be warned against continuing such behavior and if such person thereafter persists in such proscribed conduct the Commissioner may expel such person from the hearing. Any Party that engages in such improper conduct shall be warned against continued such behavior and if such Party thereafter persists in such behavior the Commissioner may (1) proceed with the hearing under such instructions and conditions as the Commissioner 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.
- (m) The Commissioner may, sua sponte or upon the request of a Party, issue subpoenas to

compel the attendance of witnesses at any hearing for the purpose of providing testimony or physical evidence, or both, if the Commissioner determines that the 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 Commissioner shall take responsibility for service of each subpoena.

(NEW) Section 31-49p-9. Decision

- (a) Each appeal to the Commissioner shall be decided with reasonable promptness following review. Except for a dismissal decision issued pursuant to section 31-49p-4 of the Regulations of Connecticut State Agencies, the decision shall affirm, reverse, or modify the decision denying compensation under the Program or under a Private plan, or imposing a penalty pursuant to section 31-49r of the Connecticut General Statutes.
- (b) The decision shall include findings of fact and a citation to the law involved and a case history summarizing the proceedings, including whether a hearing was conducted.
- (c) The Commissioner's decision on an appeal shall become final on the thirty-first (31st) calendar day after the date on which such decision was issued unless, prior to said thirty-first (31st) 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 Commissioner to reopen such decision; or
 - (2) the Commissioner, on the Commissioner's own motion, reopens such decision in accordance with the terms of section 31-49p-10 of the Regulations of Connecticut State Agencies.
- (d) If the last day for filing such a motion 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. A Party has good cause for filing a motion to reopen after the thirty-day (30) appeal period if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely motion to reopen.

(NEW) Section 31-49p-10. Motion to reopen

- (a) The Commissioner may reopen a decision on an appeal if the Commissioner determines, for good cause shown, that new evidence or the ends of justice so require. Each motion to reopen should:
 - (1) 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 previously; and
 - (C) the reason why such alleged new evidence is material

to the case.

- (b) The Commissioner shall with reasonable promptness review each such motion and issue a written decision thereon.
- (c) The Commissioner may deny any such motion based upon the allegations of new evidence if the Commissioner 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 prior to the issuance of the Commissioner's decision and the moving Party does not otherwise show good cause for such Party's failure to present such evidence.

Statement of Purpose:

(A) Statement of purpose: The State of Connecticut Labor Department is required to adjudicate Paid Family and Medical Leave appeals from denials or penalties imposed pursuant to General Statutes § 31-49r. The Labor Department is required to adopt rules of procedure for the disposition of appeals filed under General Statutes § 31-49p.

(B) Summary of the main provisions of the regulation: The regulations provide for: (a) the method of filing a PFML appeal, calculating the appeal deadline, establishing a definition of good cause for filing a late appeal; (b) the procedure for submitting written argument or additional documentary evidence and for requesting a hearing, the procedure for notifying parties that a hearing has been ordered and/or the determination that a hearing is not required; (c) the procedures for dismissing an appeal for lack of jurisdiction or withdrawal of an appeal; and (d) hearing procedures, issuance of a decision and motion to reopen procedures.