

200.01**Filing an Appeal**

- (A) Time for Filing: Pursuant to Sections 71-5-517 and 71-5-519 of the Law, an interested party must file an appeal for an initial or amended determination within fourteen (14) days of the date the determination was mailed to the last known address or delivered electronically to the email address on record. If the last day to appeal falls on a Saturday, Sunday, or other legal holiday, or day in which the Agency is closed for business, then the time allowed to appeal shall run until the end of the next business day.
- (B) Method of Filing: Appeals shall be filed using methods and procedures the Agency has established. Those methods prescribed by the Agency and new methods that may develop with technological advances and specifically include the following:
 - (1) delivery by the United States Postal Services to the address provided on the determination or decision being appealed;
 - (2) faxing to the number provided in the determination or decision being appealed;
 - (3) in-person at any WIN Job Center;
 - (4) electronically at the address provided in the determination or decision being appealed; or
 - (5) telephonically by calling the number provided on the determination or decision being appealed.

208.00**Responsibility of Parties to Notify the Appeals Department of Address Change**

- (A) It is the responsibility of each party to an appeal before the ALJ or the Board of Review to notify the Appeals Department of any change of name or address. If any party to an appeal has reason to believe that it will be difficult to receive mail or email at the address or email address provided to the Appeals Department, the party shall make the necessary arrangements to insure timely receipt of all correspondence from the Agency.
- (B) In any instance where a party alleges failure to receive timely notice of a hearing, or of a decision from the ALJ or Board of Review, it shall be the burden of such party to prove compliance with subsection (A) above.

Source: *Miss. Code Ann.* §§ 71-5-115 & 71-5-117 (Rev. 2004).

209.00 Notices from the Appeals Department

Any notice of hearing, decision, or continuance properly named, addressed, and mailed or electronically delivered by the Appeals Department and Board of Review to any interested party, and not returned by the U.S. Postal Service or as undeliverable through email, shall create a rebuttable presumption of proper delivery and receipt of such notice or decision.

Source: *Miss. Code Ann.* §§ 71-5-115 & 71-5-117 (Rev. 2004).

301.00 Reconsideration of Initial Determination

An initial determination may for good cause be reconsidered if the request is filed within fourteen (14) days from the date such notification was mailed or electronically delivered to an individual's last known address or email address. The Agency has the discretionary authority to consider untimely filed requests made under this regulation if it can be shown there are compelling circumstances which justify a reconsideration such as fraud, misconception of facts or any other reason the Agency deems compelling.

Source: *Miss. Code Ann.* §§ 71-5-115 & 71-5-117 (Rev. 2004).

320.00 Seasonal Industry

(A) Definitions:

- (1) Seasonal industry is
 - (a) that group of employers classified as "cotton gins" under the four-digit Industrial Classification Code based on the Standard Industrial Classification Manual. If an employer with a different classification has a cotton ginning operation, the Agency will assign such unit a sub-classification for cotton gins.
 - (b) that group of employers who employ vendors, concessionaires, and people working at jobs providing services at professional baseball stadiums.
- (2) Seasonal employment is employment in a seasonal industry within the seasonal operating period, as determined by the Agency.
- (3) Seasonal wages are wages paid in seasonal employment as above defined.
- (4) Seasonal benefits are benefits based on seasonal wages as above defined.
- (5) Non-seasonal employment is employment for which wages paid in such employment carry no seasonal restrictions. This employment may consist of :

- (a) Employment in the seasonal industry for which wages are paid outside the seasonal operating period (employment in the seasonal industry and in no other part of an employer's operations).
 - (b) Employment in any other covered employment as defined in the Law.
- (6) Non-seasonal wages are wages paid in non-seasonal employment as defined above.
- (7) Non-seasonal benefits are benefits based on non-seasonal wages as defined above.
- (B) The seasonal operating period, as determined by the Department:
 - (1) for the cotton ginning industry, shall be from September 1 through December 31 of each year.
 - (2) for the professional baseball industry, as defined in A(1)(b), above shall be from April 1 through September 15 of each year.
- (C) Employer quarterly reports- Each employer in the cotton ginning industry shall keep separate accounts of wages paid to employees so that the following separate quarterly reports may be made to the Department if appropriate.
 - (1) Wages paid in the cotton ginning industry inside the seasonal operating period.
 - (2) Wages paid in the cotton ginning industry outside the seasonal operating period.
 - (3) Wages paid in any other covered employment.
- (D) Professional Baseball Industry Report – Each employer in the professional baseball industry, as defined in A(1)(b) above, shall, within fourteen (14) days from the mailing date or date of electronic delivery of the Notice to Employer of Claim Filed and Request for Information (Form UI-21A) submit to the Agency information as to the type of service performed by the individual, and the period of employment, in order for the Agency to properly administer the seasonal provision of the Law.
- (E) (1) Payment of benefits to Seasonal Workers.
 The weekly benefit amount and the maximum benefit amount of any claimant who is a seasonal worker shall be calculated in the usual manner as prescribed by the Law. Seasonal benefit rights shall be used in payment of such worker's benefits only when the benefits accrue during weeks of unemployment within the seasonal operating period as defined above.

Any week which begins within the seasonal operating period shall be deemed to be within the seasonal operating period.

- (2) The calculation of a benefit determination for individuals with seasonal cotton ginning wages shall include the amount of “seasonal” benefits which may be payable only for weeks of unemployment occurring within the seasonal operating period, and the amount of benefits based on wages with no seasonal restrictions, if any. Benefits with no seasonal restrictions shall be payable to cotton gin workers for a week of unemployment during the season only if their seasonal benefits have previously been exhausted. Seasonal benefits and benefits with no seasonal restrictions may be payable for weeks of unemployment occurring during the seasonal operating period. Benefits with no seasonal restrictions shall be payable to a seasonal worker for weeks of unemployment occurring outside such period, but shall be based only on wages earned in employment with no seasonal restrictions.
- (3) Benefits paid to a seasonal worker and a non-seasonal worker shall be charged to an employer’s experience rating in the usual manner as prescribed by Law.

Source: *Miss. Code Ann.* §§ 71-5-115 & 71-5-117 (Rev. 2004).

321.00 Charging and Non-Charging of Benefits

- (A) Benefits paid to a claimant will be charged or non-charged as set forth in Section 71-5-355(2) (b)(ii) the Law.
- (B) An employer shall be eligible for non-charging as provided in (A) above only when they have furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, whichever is applicable, in the manner and within the time required, by one of the following methods:
 - (1) The employer has, within fourteen (14) days from the mailing date or date of electronic delivery of Notice to Employer of Claim Filed and Request for Information (Form UI-21A) to submit to the Agency a written statement showing the date and detailed reason for the separation or the date and details with respect to the refusal of an offer of suitable employment from such employer, whichever is applicable, identifying the individual involved by name and Social Security account number. Failure to furnish such information within the time required will result in the employer being denied eligibility for the relief of charges as provided in the referenced section of the Law.

- (2) The employer has fourteen (14) days from the date of the refusal of an offer of suitable employment to notify the Agency in writing of such refusal, giving the date and details with respect thereto.
- (C) When an employer has furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, within the time and in the manner prescribed, a decision regarding the chargeability to the employer's experience rating record will be issued. This determination will be final unless the employer files an appeal within fourteen (14) days from the regular mailing or electronic mailing date or notification of the decision.

The appeal will be heard in accordance with Section 71-5-519 of the Law. After affording all interested parties an opportunity for a fair hearing, a decision will be issued to affirm, modify or reverse the determination. That decision will become final unless within fourteen (14) days after the mailing or notification of such decision an appeal is filed to the Board of Review.

Any decision of the Board of Review will become final ten (10) days after the date of mailing or notification of that decision. Any party may secure judicial review in accordance with Section 71-5-531 of the Law by commencing action in the circuit court. The circuit court to which action should be pursued is that of the county in which the plaintiff resides, or the county in which the action occurred.

Source: *Miss. Code Ann.* §§ 71-5-115 & 71-5-117 (Rev. 2004).

612.00 Tax Appeal Regulation

1. Any employer who appeals a determination or redetermination of his or her unemployment tax liability, hereinafter called tax protest, shall have such tax protest heard by a hearing officer designated for that purpose by the Agency.
2. Any tax protest filed by an employer under the provisions of Section 71-5-355 of the Law shall be promptly forwarded to the MDES Appeals Department for processing purposes.
3. The ALJ who has been assigned the tax protest shall notify the employer of the scheduling of a hearing thereon, and a notice shall be mailed or electronically delivered to the employer not later than fourteen (14) days prior to the date set for the hearing.
4. Prior to the hearing, the ALJ shall obtain from the Contributions and Status Department of the Agency the complete file pertaining to the employer filing the protest, as well as any claim file appertaining thereto, in order that he or she may prepare for the hearing. The complete files shall be made available to the employer at the hearing so that they may

have an opportunity to review same at the time. The files shall be made a part of the record that is made at the hearing.

5. The Agency shall have the discretion to set the time and place of the hearing, and shall designate whether the hearing will be in-person or by telephone.
6. The employer may be represented at the hearing by an attorney or any other representative he or she has authorized.
7. Any testimony received shall be under oath, and the hearing shall be recorded by the ALJ, but need not be transcribed unless there is a further appeal.
8. The rules of evidence shall be relaxed.
9. The ALJ, upon a showing of the necessity, may issue subpoenas at the request of either party, or may subpoena any individual, including a claimant and any records maintained by either party or their agents which the ALJ believes may contain information relevant to the tax protest being heard.
10. The ALJ, at his or her discretion, may elect to continue a hearing for the purpose of securing testimony of a witness or for other purposes.
11. The hearing may be postponed or adjourned for good cause, within the discretion of the ALJ. If, at any time prior to an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, as provided by the Law, it should appear to the ALJ that the record should be perfected or completed, then a hearing may be reopened or reconvened for that purpose.
12. As soon as reasonably possible after the hearing has been concluded the ALJ shall issue his or her written decision, which shall in concise form state the findings of fact, and the conclusions based on such findings. The decision shall be mailed or electronically delivered to the employer and delivered to the Contributions and Status Department of the Agency.
13. There shall appear in bold face type upon the transmittal letter the following language:

THIS DECISION SHALL BECOME FINAL UNLESS WITHIN TEN (10) DAYS AFTER DATE OF MAILING OR ELECTRONIC DELIVERY HEREOF THERE SHALL BE AN APPEAL TO THE MDES BOARD OF REVIEW.
14. An appeal to the Board of Review may be taken by either the employer or by the Contributions and Status Department of the Agency.
15. Upon an appeal to the Board of Review, there may be oral argument, or briefs filed, within the discretion of the Agency.

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