

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** LABOR AND TRAINING BOARD OF REVIEW

**DIVISION:** GENERAL ADMINISTRATION

**RULE IDENTIFIER:** 460-RICR-00-00-1

**REGULATION TITLE:** RULES OF THE BOARD OF REVIEW

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Amendment

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

Public notice date of: July 16, 2018

Comment period ends: August 16, 2018

**SUMMARY OF PROPOSED RULE:**

By this rulemaking, the Department is proposing to:

1. Revise to comply with the RICR formatting and codification guidelines.
2. Correct statutory citations.
3. Streamline and clarify content to avoid confusion.
4. Reorganize content of regulation.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **August 16, 2018** to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** Sean M. Fontes, Executive Counsel, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920

**Email Address:** [sean.fontes@dlt.ri.gov](mailto:sean.fontes@dlt.ri.gov)

**WHERE COMMENTS MAY BE INSPECTED:**

**Mailing Address:** Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI, 02920.

**PUBLIC HEARING INFORMATION:**

**Public Hearing Date & Time:** July 27, 2018 from 1:00 pm to 2:30 pm

**Public Hearing Location:** Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI, 02920, Conference Room 73-1

THE PLACE OF THE PUBLIC HEARING IS ACCESSIBLE TO THE HANDICAPPED. IF COMMUNICATION ASSISTANCE (READERS/ INTERPRETERS/CAPTIONERS) IS NEEDED, OR ANY OTHER ACCOMMODATION TO ENSURE EQUAL PARTICIPATION, PLEASE CALL 401-462-8000 OR RI RELAY 711 AT LEAST THREE (3) BUSINESS DAYS PRIOR TO THE MEETING SO ARRANGEMENTS CAN BE MADE TO PROVIDE SUCH ASSISTANCE AT NO COST TO THE PERSON REQUESTING.

**FOR FUTHER INFORMATION CONTACT:**

Sean M. Fontes, Executive Counsel, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920, 462-8890, sean.fontes@dlt.ri.gov

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

It is beneficial for the public to be fully informed of the process for practicing before the Board of Review.

**Authority for This Rulemaking:** R.I. Gen. Laws Ch. 28-40 et. seq.

**Regulatory Findings:**

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**Concise Summary of Non-Technical Changes:**

1. Revise to comply with the RICR formatting and codification guidelines.
2. Correct statutory citations.
3. Streamline and clarify content to avoid confusion.
4. Reorganize content of regulation.

Date Notice Was Posted: July 16, 2018

**The Proposed Amendment:**

Department of Labor and Training proposes to amend the proposed rule as follows:

460-RICR-00-00-1

## TITLE 460 – LABOR AND TRAINING BOARD OF REVIEW

### CHAPTER 00 – N/A

### SUBCHAPTER 00 - N/A

#### PART 1 - Rules of the Board of Review

### **1.1 Authority**

These regulations are promulgated under the authority of R.I. Gen. Laws Chapter 28-40 et seq.

### **1.2 Purpose**

The purpose of these rules is to clarify procedure before the Board of Review.

### **1.3 Definitions**

- A. “Department” means the Department of Labor and Training.
- B. “Director” means the Director of the Department of Labor and Training.
- C. “Interested party” means the director, the board of review, the claimant and any employer or employing unit who has furnished information other than wage information in accordance with R.I. Gen. Laws § 28-44-38(c).

### **1.4 Appeal from the Director**

- A. Any appeal or request for hearing under the R.I. Gen. Laws §§ 28-41-18 or 28-44-39(b) with respect to a decision of the Director shall be made by an interested party within fifteen (15) calendar days of the mailing date of the Director's decision in person at or by mail to the Department of Labor and Training. However, said fifteen (15) calendar day period may be extended for good cause shown.
- B. Any appeal under the R.I. Gen. Laws §§ 28-40-7, 28-43-13 or 28-43-14 of a decision of the Director shall be made by an interested party in writing to the Board of Review within fifteen (15) calendar days of the mailing date of the Director's decision. However, said fifteen (15) day period may be extended for good cause shown.

## 1.5 Transmittal of Record

Immediately upon the filing of any appeal or request for hearing with respect to a decision of the Director, the Director shall cause the full record of the matter to be transmitted to the Board of Review.

## 1.6 Availability of Record

The record of any matter pending before the Board of Review or a designated Appeal Tribunal shall be available for inspection by any interested party at the office of the Board of Review during normal working hours.

~~For the purpose of these rules, an "interested party" shall be deemed to be the director, the board of review, the claimant and any employer or employing unit who has furnished information other than wage information in accordance with subsection 28-44-38(c) of the Rhode Island General Laws.~~

## 1.7 Referee as Appeal Tribunal

- A. The Board of Review may appoint one or more impartial referees to serve as appeal tribunals. The Board of Review may assign any appeal from or request for hearing with respect to a decision of the Director to a Referee for investigation, hearing, fact finding and/or decision.
- B. The Board of Review may appoint a Chief Referee who shall supervise the referees and staff of the Board, assign cases to referees, schedule hearings before referees and the Board, maintain the records of the referees and the Board, compile statistics as required by the Board and perform such other services as the Board may from time to time direct. The Chief Referee shall report to the Board.

## 1.8 Hearing Schedule

As soon as possible after the filing of an appeal or request for hearing, a hearing shall be scheduled before the Board of Review or before a Referee to whom the matter has been assigned.

## 1.9 Notice of Hearing Before Referee or Board

- A. At least seven (7) calendar days before the date of a hearing scheduled before a Referee or the Board of Review, a written notice shall be mailed to all parties at their last known addresses. The notice of hearing shall include the following:
  - 1. The date and time of the scheduled hearing;
  - 2. The location of the hearing including the city, street address and room number;

3. The purpose of the hearing, the issue or issues involved and the applicable statute, regulation or rule;
  4. Advice as to the importance of attending the hearing;
  5. Information concerning appropriate procedural rights, e.g., the right to be represented and to present evidence;
  6. Information concerning postponements and withdrawals;
  7. A description of the responsibility and authority of the Referee; and
  8. Advice as to where and how further assistance or information may be obtained.
- B. A notice of hearing before the Board of Review shall indicate, when appropriate, that such hearing will be:
1. A full hearing;
  2. A de novo hearing;
  3. A hearing for argument and new evidence only; or
  4. A hearing for argument only.

### **1.10 Postponement of Hearings**

Upon motion of the Referee or the Board of Review or at the request of an interested party for good cause, the Referee or Board may postpone a hearing, provided that the hearing shall promptly be rescheduled to prevent unreasonable delay.

### **1.11 Public Hearings**

Hearings before a Referee or the Board of Review shall be open to the public except when the Referee or Board determines that good cause requires otherwise. The Referee or Board may, when appropriate, order witnesses to be sequestered. A Referee or the Board may exclude from any hearing a person whose conduct is disruptive to the interest of justice.

### **1.12 Evidence at Referee Hearings**

At a hearing before a Referee each interested party may present such sworn testimony and other evidence as may be relevant to the issues pending in the matter. Each interested party shall have the right to cross examine witnesses testifying at the hearing. The Referee shall inquire into and develop all facts

bearing on the issues and shall receive and consider evidence without regard to statutory and common law rules.

### **1.13 Transcripts**

A record shall be kept of all testimony and proceedings in any appeal pending before a Referee or the Board of Review. Such record may be made by stenographic service or by recording device. Testimony and proceedings shall not be transcribed unless and until an appeal is properly filed from the decision of said Referee or Board. Confidentiality of records shall be in accordance with R.I. Gen. Laws § 28-42-38.

### **1.14 Representation at Hearings**

Any interested party may be represented at a hearing before a Referee or the Board of Review by a person knowledgeable of, as appropriate, the Unemployment Insurance or Temporary Disability Insurance programs of the State of Rhode Island. A party's representative need not be an attorney.

### **1.15 Telephone Hearings**

At the discretion of the Referee or the Board of Review, one or more interested parties may participate in a hearing by telephone and not in person. All other rules shall apply to such hearings.

### **1.16 Reopening by Referee**

After decision, the Referee may reopen any matter for reason of fraud, mistake, collusion or substantial new evidence or when the interests of justice so require.

### **1.17 Appeal from the Referee**

An interested party aggrieved by a decision of a Referee may appeal said decision by filing a notice of appeal in writing with the Board of Review within fifteen (15) calendar days of the Referee's decision.

### **1.18 Hearing Before Board of Review**

- A. In any matter which has not been heard before a Referee a full hearing shall be held before the Board of Review at which hearing each interested party may present such sworn testimony and other evidence as may be relevant to the issues pending in the matter. Each interested party shall have the right to cross examine witnesses testifying at the hearing. The Board of Review shall inquire into and develop all facts bearing on the issues and shall receive and consider evidence without regard to statutory and common law rules.

- B. At all other hearings before the Board of Review, the Board may elicit and receive such evidence and argument as it deems appropriate, consistent with the notice of said hearing.

### **1.19 Remand by Board of Review**

- A. Any matter pending before the Board of Review may be remanded by the Board to a Referee for hearing, fact finding, decision and/or reconsideration.
- B. Any matter pending before a Referee or the Board of Review may be remanded by the Board to the Director for investigation, fact finding, decision and/or reconsideration.

### **1.20 REOPENING BY BOARD OF REVIEW**

After decision, the Board of Review may reopen any matter for reason of fraud, mistake, collusion or substantial new evidence or when the interests of justice so require.

### **1.21 APPEAL FROM BOARD OF REVIEW**

Any interested party aggrieved by a decision of the Board of Review may appeal therefrom by filing a notice of appeal with the District Court, Sixth Division, within thirty (30) days of the Boards decision in accordance with the provisions of R.I. Gen. Laws § 42-35-15.