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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 required 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) **Intervenor.** 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)