

APPEALS

IN GENERAL

This chapter provides information about state law provisions concerning appeals authorities and time limitations for review for first stage appeals, second stage appeals, and judicial review.

The Social Security Act (SSA) requires states to offer “opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.” Hence, all state laws provide for such appeal tribunals. Further, all but a few states’ laws provide for a second appeal stage. In all states, individuals who are not satisfied with the outcome of the administrative appeal(s) can appeal their cases in the state court system, federal courts, and, as a last resort, to the U.S. Supreme Court. In all states, employers who have an interest are granted the right to appeal decisions on claims as well.

As a result of *California Department of Human Resources Development v. Java*, once a claimant has been held eligible for benefits, such claimant will continue to receive benefits until a decision is issued reversing the determination allowing benefits. Thus, an employer’s appeal will not affect the continuance in payment of benefits unless a decision is issued denying benefits. The majority of state laws specifically provide for the payment of benefits pending an appeal from a determination or decision allowing benefits while other states have either interpreted their laws or have been required by court order to follow this procedure. In all states, this procedure applies to any determination or decision issued allowing benefits.

Most of the states specify that findings of fact, conclusions of law, or final orders made by a UI hearing officer or board of review will not be binding in any separate or subsequent proceeding brought before any court, judicial, administrative, or arbitration proceeding in that state or the U.S. Government. Some states’ laws provide that information obtained in connection with the UI law may not be used in certain civil law suits as well. Listed below are the states that do not specify that findings, conclusions, or orders of hearing officers are not binding in court:

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|------------------|-----------------|----------------|------------------|------------|
| * Alabama | * Delaware | * Hawaii | * Kentucky | * Maryland |
| * Mississippi | * Puerto Rico | * Rhode Island | * South Carolina | * |
| Virginia | | | | |
| * Virgin Islands | * West Virginia | | | |

FIRST AND SECOND STAGE APPEALS

FIRST STAGE APPEALS—Typically, all state laws provide that appeals at the initial stage will be conducted by one person called a referee, examiner, or administrative law judge.

The time period for appealing to the first stage appeals body is generally stated in terms of days; the

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number of days for filing an appeal after notice of the determination varies among the states, ranging from 5 to 30 days. Almost half of the states specify that a “day” is defined as a calendar day. Some of the states which do not define day extend the due date for filing appeals if the last day for filing or the date of mailing falls on a Saturday, Sunday, holiday, or any other day the state agency is closed. Many states extend the time for filing for good cause. For more specific information about states’ law provisions, see the table at the end of this section.

In all but a few states, the decision of the first stage appeals body is final in the absence of an appeal. In other states, the official may reconsider his/her decision within the appeal period.

SECOND STAGE APPEALS—About half of the states that established second stage appeals have a board of review, board of appeals, or appeals board to hear cases appealed from the decision of the lower appeal tribunal. Almost all of these boards consist of three members. The members of the appeals boards generally represent labor, employers, and the public. Shown below is an overview of the exceptions concerning membership:

- AR – The chairman must be an attorney who is not a representative of employers or employees.
- CA – Two of the members must be attorneys.
- IN – No more than two members may belong to the same political party. One member must practice law in the state.
- ME – The chairman of the commission must be an attorney.
- MA – The chairman must be an attorney.
- NH – When the board is in session, none of the three members can be from the same category of representation.
- NY – No more than three members may belong to the same political party.
- OH – No more than two members may belong to the same political party.
- OK – No member may serve as an officer of any political party organization during his term of office.
- OR – No more than two members may belong to the same political party.
- RI – No more than two members may belong to the same political party.
- WV – The governor may not appoint anyone who is identified with the interests of either employers or employees.

In the rest of the states that established second stage appeals, it is handled by an existing commission or agency head.

TIME LIMITS FOR FILING APPEALS AND APPEALS BODIES—Many states extend the time for filing for good cause; this provision can be found in policy rather than in law in some states. Some states provide that a contested determination which involves a labor dispute shall be appealed directly to the second stage appeals body. In some states, a special examiner is designated to determine the original claim. State-specific information for filing appeals can be found in the following table:

TABLE 7-1: TIME LIMITATIONS FOR APPEAL AND APPEALS BODIES				
	1st Stage Appeals		2nd Stage Appeals	
State	Number Of Days For Filing	Body	Number Of Days For Filing	Body
AL	15 after mailing; 7 after delivery	Appeals Tribunal	15 after mailing	Board of Appeals
AK	30 after mailing or personal delivery	Referee	30 after mailing or personal delivery	Commissioner
AZ	15 ¹ after mailing, 7 ¹ after delivery	Appeal Tribunal	15 ¹ after mailing	Appeals Board
AR	20 after mailing	Appeal Tribunal	20 ¹ after mailing or delivery	Board of Review

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TABLE 7-1: TIME LIMITATIONS FOR APPEAL AND APPEALS BODIES

State	1 st Stage Appeals		2 nd Stage Appeals	
	Number Of Days For Filing	Body	Number Of Days For Filing	Body
CA	20 after mailing or personal service	Administrative Law Judge	20 after mailing or personal service	Appeals Board
CO	15 ¹ mailing or personal delivery	Hearing Officer	15 ¹ mailing or personal delivery	Industrial Claim Appeals Office (Panel)
CT	21 after mailing	Referee	22 ¹ after mailing	Board of Review
DE	10 ¹ after mailing	Appeal Tribunal	10 after decision is final	Office of Inspector General
DC	10 ¹ after mailing or actual delivery	Examiner	10 ¹ after mailing	Director
FL	20 ¹ after mailing or delivery	Referee	20 ¹ after mailing or delivery	Unemployment Appeals Commission
GA	15 after mailing or delivery	Administrative Hearing Officer	15 after mailing	Board of Review
HI	10 from mailing or delivery	Referee	NO SECOND STAGE APPEAL	
ID	14 after mailing or delivery	Examiner	14 after actual notice	Industrial Commission
IL	30 after mailing or delivery	Referee	30 after mailing	Board of Review
IN	10 after mailing or delivery <u>1/</u>	Administrative Law Judge	15 ² notification or mailing	Review Board
IA	10 mailing	Examiner	15 notification or mailing	Appeal Board
KS	16 ¹ after mailing or delivery	Referee	16 after mailing	Board of Review
KY	10 after mailing	Referee	10 after mailing	UI Commission
LA	15 after mailing or being given to the party	Administrative Law Judge (Appeal Tribunal)	15 after mailing or being given to the party	Board of Review
ME	15 ¹ after mailing	Division Of Admin. Hearings	15 ¹ after mailing	UI Commission
MD	15 ¹ after mailing or delivery	Examiner	15 ¹ after mailing or delivery	Board of Appeals
MA	10 mailing or delivery	Board, or examiner designated by the board	30 mailing	Board of Review
MI	30 after mailing or personal service	Referee	30 after mailing	Board of Review
MN	30 after mailing or delivery	Unemployment Law Judge	NO SECOND STAGE	APPEAL
MS	14 after notification or delivery	Appeal Tribunal	14 after notification or delivery	Board of Review
MO	30 from delivery or mailing	Appeal Tribunal	30 from delivery or mailing	Industrial Commission
MT	10 after mailing	Referee	10 after mailing	Board of Labor Appeals
NE	20 after delivery or mailing	Appeal Tribunal	NO SECOND STAGE APPEAL	
NV	11 after mailing or personal services	Appeal Tribunal	11 after mailing or personal service	Board of Review
NH	14 ¹ after mailing	Appeal Tribunal	14 after mailing	Appellate Board
NJ	7 after delivery 10 after mailing	Appeal Tribunal	10 days notification or mailing	Board of Review
NM	15 after notification or mailing	Hearing Officer	15 days after notification or mailing	Board of Review
NY	30 after mailing or personal delivery	Referee	20 after mailing or personal delivery	Appeal Board
NC	15 after notification or mailing	Referee	10* after notification or mailing	Employment Security Commission
ND	12 after mailing or service	Appeal Tribunal	12 after mailing or service	Bureau

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TABLE 7-1: TIME LIMITATIONS FOR APPEAL AND APPEALS BODIES

State	1 st Stage Appeals		2 nd Stage Appeals	
	Number Of Days For Filing	Body	Number Of Days For Filing	Body
OH	21 ¹ after mailing (Redetermination)	Director	21 ¹ after mailing	Unemployment Compensation Review Commission
OK	10 after mailing or delivery	Appeal Tribunal	10 after mailing	Board of Review
OR	10 after delivery or mailing	Hearing Officer	20	Employment Appeals Board
PA	15 ¹ after mailing	Referee	15 after mailing	Board of Review
PR	15 after mailing or delivery	Referee	15 after mailing or delivery	Secretary of Labor
RI	15 ¹	Appeal Tribunal	15	Board of Review
SC	10 after mailing or delivery	Appeal Tribunal	10 ¹ after mailing or delivery	Employment Security Commission
SD	15 after mailing	Referee	15 mailing or notification	Secretary
TN	15 after mailing or been given-which ever occurs first	Tribunal (Unemployment Hearing Officers)	15 after mailing or been given, which ever occurs first	Board of Review
TX	14 after mailing	Appeal Tribunal (examiner)	14 after mailing	Commission Appeals
UT	15 ¹ after mailing	Administrative Law Judge	30 after notice	Appeals Board
VT	30 after mailing	Administrative Law Judge	30	Employment Security Board
VI	10 after mailing or delivery	Examiner	NO SECOND STAGE APPEAL	
VA	30 ¹ after mailing or delivery	Appeal Tribunal	30 after mailing or delivery	Board of Review
WA	30 after mailing or notification	Appeal Tribunal	30 after mailing or notification	Employment Security Commission
WV	8 ¹ after mailing or delivery	Appeal Tribunal	8 ¹ after mailing or delivery	Board of Review
WI	14 after mailing or been give-which ever occurs first	Appeal Tribunal	21 after mailing	Labor and Industry Review Commission
WY	15 after mailing or delivery	Appeal Tribunal	15 after mailing or delivery	Employment Security Commission

¹ Indicates “calendar” days * Indicates “working” days

1/ Entry in table applies to claimants only. Employers have 10 days to appeal, except for employers in AK, HI or PR, who have 15 days.

JUDICIAL REVIEW

All states provide for appeals to the courts for judicial review. In general, the time limit for filing ranges from 10 to 50 days. States that designate a specific period of time to exhaust actions before the second administrative appeal body decision becomes final provide an additional period of time in which to seek judicial review commencing with the date the decision is final.

TABLE 7-2: JUDICIAL REVIEW

State	Number Of Days For Filing			Court Of Initial Jurisdiction
	After Delivery <u>1/</u>	After Mailing	Other	
AL		10 + 30		Circuit Court in county in which claimant resides.
AK			Within 30 days after date of entry of decision (prescribed by appellate rules).	Superior Court

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TABLE 7-2: JUDICIAL REVIEW				
State	Number Of Days For Filing			Court Of Initial Jurisdiction
	After Delivery <u>1/</u>	After Mailing	Other	
AZ	30			Court of Appeals
AR	30			Court of Appeals
CA			Within 6 months of date of decision, or date it is designated a precedent, whichever is later.	Superior Court; by court rule, no statutory provision.
CO		15 + 20; claimant must appeal to commission for a review within 15 days before appeal to court.		Court of Appeals
CT		31		Superior Court in Hartford or district where appellant resides.
DE	10 + 10			Superior Court
DC			30 days after decision is final.	D.C. Court of Appeals
FL			Within 30 days after date of entry of decision (prescribed by appellate rules).	District Court of Appeals; where claim was filed.
GA	15 + 15			Superior Court in county or city in which the claimant last worked.
HI			30 days after service of referee's decision.	Circuit Court in county in which claimant resides or in county or city in which the claimant last worked.
ID	30			Supreme Court
IL		35		Circuit Court in county in which claimant resides. Non-resident may file suit in Circuit Court of Cook County or in county in which business is located.
IN		15; or 30 days from date of notice of intention to appeal made within the 15-day period.		Indiana Court of Appeals
IA	10 + 20			District Court in county in which claimant resides. Non-resident may file suit in District Court of Polk County or where claimant last worked.
KS		16		District Court in county where claimant resides. Non-resident may file suit in Shawnee County District Court or in county in which business is located.
KY			20 days after date of decision.	Circuit Court in county or city in which the claimant last worked.
LA	15			District Court in the parish in which claimant resides.
ME	10 + 15			Superior Court in county in which plaintiff lives or does business.
MD	30			Circuit Court of county of Baltimore.
MA		20		District Court in county in which claimant resides or in county or city in which the claimant last worked.
MI		30		Circuit Court in county in which claimant resides or last worked, or county in which business is located.
MN		30		Court of Appeals

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TABLE 7-2: JUDICIAL REVIEW				
State	Number Of Days For Filing			Court Of Initial Jurisdiction
	After Delivery <u>1</u>/	After Mailing	Other	
MS	10 + 10			Circuit Court of the county where party resides, the county in which the action arose, or in the county of employment.
MO	10 + 20			Appellate Court; appeals on interstate claims will be in Court of Appeals for the Western District.
MT		30		District Court in county in which claimant resides.
NE		5 + 30; no further administrative appeal.		District Court in county in which claimant resides or last worked.
NV	10 + 10			District Court where employment was performed.
NH		30		Supreme Court
NJ		45; by court rule, no statutory provision.		Superior Court, Appellate Division
NM			15; after notification or mailing of decision.	District Court in county in which claimant resides.
NY	30			Supreme Court, Appellate Division, Third Department
NC	30; party must file a notice of intent to appeal before decision is final.			Superior Court in county in which claimant resides.
ND	30			District Court
OH		30		Court of Common Pleas in county in which claimant resides or last worked, or in county in which business is located.
OK		10		District Court in county in which claimant resides. Non-resident may file suit in District Court of Oklahoma County.
OR			30; after decision is served.	Circuit Court
PA		15 + 30		Commonwealth Court
PR	30			Superior Court in county in which claimant resides.
RI	30			Superior Court of Providence or Bristol or in county in which claimant resides.
SC	30			Court of Commons Pleas in county in which claimant resides or in county or city in which the claimant last worked.
SD			30 days after date of decision.	Circuit Court
TN	30			Chancery Court in county in which claimant resides.
TX		14 + 14		County Court in county in which claimant resides. Non-resident may file suit in Travis County Court.
UT	10 + 10			Supreme Court
VT		2	30 days after notice of appeal is filed.	Supreme Court
VA	10 + 30			Circuit Court where claimant last worked.
VI	30			District Court of the Virgin Islands
WA	30			Superior Court; appeals on intrastate claims filed in petitioners choice of Thurston County or county of residence or business; appeals on interstate claims in Thurston County.

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TABLE 7-2: JUDICIAL REVIEW				
State	Number Of Days For Filing			Court Of Initial Jurisdiction
	After Delivery ^{1/}	After Mailing	Other	
WV		30 + 20; appeals involving a labor dispute must be filed within 20 days after mailing of Board's decision.		Circuit Court of Kanawha County
WI		30		Circuit Court of Dane County
WY	10			District Court of Natrona County or in county in which claimant resides or in county in which business is located.
^{1/} Where two figures are shown, first figure is number of days after which decision is final and is the time claimant has to exhaust actions before administrative appeal bodies; second figure is additional time allowed to seek judicial review.				