

# Proposed Rulemaking

## Title

Promulgated by:  
Division of Workforce Services

### **Title 11. Labor and Industrial Relations**

#### **Chapter I. Division of Workforce Services, Department of Commerce**

##### **Subchapter A. Generally**

##### **Part 1. Division of Workforce Services Rules**

##### **Subpart 2. Unemployment Insurance Contributions and Employers**

#### **11 CAR § 1-201. Cash value of certain remunerations.**

(a) The Director of the Division of Workforce Services shall determine or approve the cash value of any payment in kind considered as payment for service performed by an individual which is in addition to, or in lieu of, money or wages, and such values shall be reported as wages.

(b) A money value for payment in kind furnished to a worker agreed upon by the worker and his or her employing unit shall be deemed the cash value of such payment in kind unless:

- (1) It is less than rates specially determined by the director; or
- (2) In the case of board and lodging, less than the rates prescribed in subsection (c) of this section, below.

(c) Board and/or lodging furnished an individual in addition to, or in lieu of, money or wages, shall be:

- (1) Reported as wages; and
- (2) Deemed to have not less than the following values:

Full board and room weekly .....	forty dollars
(\$40.00)	
Meals per week .....	twenty-two dollars and fifty cents
(\$22.50)	
Meals per day .....	three dollars and seventy-five cents
(\$3.75)	
Each meal .....	one dollar and fifty cents
(\$1.50)	
Lodging per week .....	twenty-one dollars
(\$21.00)	
Lodging per day .....	three dollars and fifty cents
(\$3.50)	

(d) Notwithstanding the provisions of subsection (c) of this section, above, if the cost of meals furnished an individual in addition to, or in lieu of, money or wages exceeds the amounts set forth in subsection (c) of this section, the employer may value meals so provided on the basis of their cost to the employer.

**11 CAR § 1-202. Exclusion of expense allowances and reimbursements from wages.**

Any allowances or reimbursements for traveling or other expenses made by an employer to any traveling salesperson or other individual shall constitute wages unless:

(1) Allowances are identified as such and are for bona fide, ordinary, and necessary expenses normally incurred, or reasonably expected to be incurred, by the individual while conducting business on behalf of his or her employer; or

(2) Reimbursements for expenses incurred do not exceed those amounts accounted for by the individual to his or her employer.

**11 CAR § 1-203. Identification of covered workers.**

The Director of the Division of Workforce Services prescribes that:

(1) Each employer shall secure the Social Security number of each worker employed by him or her in employment subject to the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq.; and

(2) The employer shall report the worker's Social Security number in making any report required by the division with respect to a worker.

**11 CAR § 1-204. Posting and providing notice to workers.**

(a) Every employing unit that is or becomes an employer under the provisions of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., shall do the following:

(1) Post, on a continuing basis, a printed notice informing its workers that:

(A) It is an employer under the Division of Workforce Services Law; and

(B) In the event of their unemployment, they may be eligible for unemployment benefits; and

(2)(A) Provide the notice in Appendix A to this part to each employee upon that employee's separation from employment.

(B) The method of delivery of the notice shall be at the employer's discretion.

(b) The notices shall be maintained in locations readily accessible to the employer's workers.

(c) The notices shall not be posted by any employing unit that has not been determined to be, or who has ceased to be, an employer under the Division of Workforce Services Law.

(d) The Director of the Division of Workforce Services shall supply notices to employing units for posting when they are determined to be employers under the Division of Workforce Services Law or upon request.

(e) Any lessor employing unit will provide individual, written notice to each employee specifying the appropriate Division of Workforce Services account number and employer name to be used for the purpose of applying for unemployment insurance benefits.

**11 CAR § 1-205. Contribution payments and reports, payments in lieu of contributions, advance payments, and wage reports.**

(a)(1)(A) Except as otherwise provided in this subsection, each employing unit that is or becomes an employer under the provisions of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., including those that elect to make payments in lieu of contributions under Arkansas Code § 11-10-713, shall file with the Division of Workforce Services an employer's quarterly contribution and wage report electronically in the division's online portal.

(B) The report shall be filed on a quarterly basis in accordance with the due dates specified in subsection (b) of this section, below.

(C) The report shall contain:

(i) The employer's:

(a) Name;

(b) Division account number; and

(c) Address at which the employer keeps payroll records;

(ii) The name and Social Security number of each worker employed by the employer during the calendar quarter;

(iii) The total wages, as defined in Arkansas Code § 11-10-215, paid to each employee with respect to the calendar quarter designated; and

(iv) Any other information that may be requested on the form.

(D) Each employer's quarterly contribution and wage report shall be certified by:

(i) The individual, if the employer is an individual;

(ii) The president, vice president, or other principal officer if the employer is a corporation; or

(iii) A responsible and duly authorized agent having knowledge of its affairs, if the employer is an individual partnership, other unincorporated organization, governmental employing unit, or a group account.

(2) The employer's quarterly contribution and wage report may only be submitted on paper if:

(A) The employer has fewer than five (5) employees to report for the quarter; and

(B) It contains all of the information required under subdivision (a)(1)(C) of this section.

(3)(A) All employing units that are care recipients receiving personal care services pursuant to an Arkansas Medicaid program may have the required information reported by an entity under contract with the state to provide fiscal agent services, employer agent services, or both for Arkansas Medicaid programs.

(B) The information may be reported under a single account number established by the fiscal or employer agent.

(C) The fiscal or employer agent shall be liable for all contributions, penalties, and interest related to the account.

(D) The fiscal or employer agent shall maintain separate records for each employer for which it reports on the account.

(b)(1) With respect to wages paid for employment for any calendar year, contributions shall become due and payable on a quarterly basis.

(2) The contribution payment and the employer's quarterly contribution and wage report shall be due and payable in the following manner:

(A) The first calendar quarter shall be due and payable during the month of April of the calendar year;

(B) The second calendar quarter shall be due and payable during the month of July of the calendar year;

(C) The third calendar quarter shall be due and payable during the month of October of the calendar year;

(D) The fourth calendar quarter shall be due and payable during the month of January of the next calendar year;

(c) All contribution payments and reports shall include all contributions with respect to wages paid for employment in all pay periods ending within the calendar quarter to which the payment and report has reference.

(d) Wages earned for employment, the exact amount of which, or the person to whom payable was not determined during any previous pay period shall, for the purposes of this section, be reported in the pay period in which they are actually paid.

(e)(1) The receipt date of any contribution payment or report shall be the day on which it is received either by the division in the state administrative office at Little Rock, Arkansas except that the receipt date of any contribution payment or report mailed to the division shall be the day it was postmarked as received in the mail by the United States Postal Service.

(2) The receipt date of any contribution payment by electronic funds transfer shall be the date that the remittance is transferred to the division.

(f)(1) Upon the written request of any employer filed with the Director of the Division of Workforce Services on or before the due date of any contribution payment, the director, for good cause shown, may grant in writing an extension of time for the filing of an employer's quarterly contribution and wage report and the payment of the contribution due thereon.

(2) However:

(A) No extension for the filing of the contribution report and the payment of the contribution due thereon shall exceed thirty (30) days; and

(B) No extension shall postpone the filing of the contribution report and the payment of the contribution due thereon beyond the fifteenth day preceding the last day for filing tax returns under the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq.

(3)(A) If any employer that has been granted an extension fails to file its employer's quarterly contribution and wage report within the extension period, the penalty provision of the Division of Workforce Services Law shall apply.

(B) If any employer fails to pay the contribution due on the report within the extension period, interest shall be payable from the original due date as if no extension has been granted.

(g) The first contribution payment, together with the contribution report of any employing unit that becomes an employer under the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., shall be due and payable during the calendar month next following the close of the calendar quarter in which it becomes an employer.

(h) Whenever the director finds the collection of contributions from any particular employer may be jeopardized because of bankruptcy, removal, or other factors, he or she may:

(1) Advance the due date of such employer's contributions to such date, succeeding the period with respect to which they have accrued, as he or she deems advisable; or

(2) In his or her discretion, upon such finding or upon the request of an employer, prescribe payment of contributions from such employer monthly rather than quarterly.

(i) At the end of each calendar quarter, or as soon thereafter as possible, the division shall send to each employing unit, which makes payments in lieu of contributions, except state government employing units, a quarterly listing of benefit charges showing the amount of regular and extended benefits paid to claimants during such quarter based on wages paid by such employing unit and charged to such employing unit.

(j)(1) At the end of each calendar quarter, or as soon thereafter as possible, the director shall bill the Department of Finance and Administration for all regular and extended benefits chargeable to state government employing units.

(2) The department shall pay such billings within thirty (30) days after the date the director mails or otherwise delivers such billings to the department.

**11 CAR § 1-206. Termination of coverage.**

(a) Except as otherwise provided in Arkansas Code § 11-10-403 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., the following employing units shall cease to be employers subject to said law, either upon approval by the Director of the Division of Workforce Services of their application for termination of coverage or upon determination of the facts and decision by the director on his or her own initiative:

(1) Any employing unit having its base of operations or point of control either within or without this state, but which has not had any individuals in employment throughout a period of two (2) complete calendar quarters and does not anticipate having individuals in employment in the state; and

(2) Any employing unit, the base of operations or point of control of which is either within or without this state, and which terminates its business for any reason whatsoever or sells its business or assets to another.

(b) Each employing unit so ceasing to be an employer shall:

(1) Render a report of such cessation promptly to the director, in accordance with 11 CAR § 1-211; and

(2) Likewise promptly notify the director in case of any resumption of business.

**11 CAR § 1-207. Seasonal industries, employer reports, and benefits.**

(a) **Definitions.** As used in this section, unless the context clearly requires otherwise:

(1)(A) "Industry" means all of that group of employers classified under the same four-digit Standard Industrial Classification code of the Social Security Administration, except that when the Director of the Division of Workforce Services finds that any such industry includes one (1) or more groups of employers who are distinct in nature from the remainder of employers in such industry, and that these groups are sufficiently large and homogenous, the director may set up appropriate subclassifications within such industry and treat such subclassifications as a separate industry.



(B) The director shall notify the Division of Workforce Services Advisory Council quarterly of any request for change in subclassification status;

(2) "Nonseasonal benefits" means unemployment insurance benefits based on nonseasonal earnings as defined in this section;

(3) "Nonseasonal earnings" means wages paid in nonseasonal employment as defined in this section;

(4) "Nonseasonal employment" means employment:

(A) By an employer in an industry which had not previously been determined by the director to be a seasonal industry; or

(B) Outside the normal seasonal period of operations of an industry subsequent to that industry's having been determined by the director to be a seasonal industry;

(5) "Seasonal benefits" means unemployment insurance benefits based on seasonal earnings as defined in this section;

(6) "Seasonal earnings" means wages paid in seasonal employment as defined in this section; and

(7) "Seasonal employment" means employment by an employer within the normal seasonal period of operation of an industry subsequent to that industry having been determined by the director to be a seasonal industry.

**(b) Determinations of seasonal industry.**

(1)(A) A determination on a seasonal industry and its normal seasonal period of operations shall apply to each employer in the industry.

(B) Each employer shall be promptly notified of any determination affecting its industry.

(C) Each employer in an industry determined seasonal shall keep posted conspicuously a notice provided by the Division of Workforce Services notifying employees of the determination and informing them that their benefit rights are subject to the restrictions imposed by the determination and by this section.

(2)(A) Upon the initiation of a study to determine whether an industry should continue to be classified as seasonal, the director shall notify all active employers within that industry of the study.

(B) The director shall:

(i) As part of the study, schedule a hearing to consider the continuation of the seasonal classification; and

(ii) Notify all of the active employers in the industry of the time and place for such hearing, thereby affording the opportunity to attend and participate in the hearing.

(C) Such hearing notification shall be posted by the employer with other notices provided by the division as stated in subdivision (b)(1) of this section, above.

(c) **Seasonal employer reports.** Each employer in a seasonal industry shall:

(1) Keep separate account of wages paid to employees within and without the normal seasonal period of operations; and

(2) Report these wages on a special seasonal quarterly report form provided by the division.

(d) **Payment of benefits to seasonal workers.**

(1)(A) 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 Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., but seasonal benefit rights shall be used in the payment of such worker's benefits only when the benefits accrue during weeks of unemployment within the normal seasonal operating period of the industry.

(B) A week of unemployment shall be deemed to be "in", "within", or "during" the normal seasonal period if four (4) or more days of the week are included therein.

(2)(A) In calculating any benefit determination for a seasonal worker as provided in subdivision (d)(1) of this section, there shall be stated, in addition to the weekly and maximum benefit amounts, the amount of:

(i) Seasonal benefits which may be payable only for unemployment occurring within the normal seasonal period of a seasonal industry; and

(ii) Nonseasonal benefits, if any.

(B) Seasonal benefits and nonseasonal benefits may be payable to a seasonal worker in an aggregate amount equal to his or her maximum benefit amount for weeks of unemployment occurring during the normal seasonal operating period of the industry, provided that nonseasonal benefits shall be payable to such worker for unemployment in such period only if his or her seasonal benefits have previously been exhausted.

(C) Nonseasonal benefits shall be payable to a seasonal worker for weeks of unemployment occurring outside such period but shall:

(i) Be based only on wages paid in nonseasonal employment; and

(ii) Not be payable in an aggregate amount greater than the seasonal worker's maximum benefit amount determined according to Arkansas Code §§ 11-10-501 – 11-10-505, less the amounts of any benefits which have previously been paid to such worker during the same benefit year.

(3) Benefits paid to a seasonal worker shall be charged to an employer's experience rating account in the following manner:

(A) Seasonal benefits paid shall be prorated only on the basis of seasonal base period wages and charged in the manner prescribed in Arkansas Code § 11-10-703, to the separate account or accounts of the base period employer or employers that paid the seasonal wages; and

(B) Nonseasonal benefits paid shall be prorated only on the basis of nonseasonal, base period wages and charged in the manner prescribed in Arkansas Code § 11-10-703, to the separate account or accounts of the base period employer or employers that paid the nonseasonal wages.

(4) No wages shall be deemed seasonal if earned prior to the effective date of the determination of such industry as seasonal by the director.

**11 CAR § 1-208. Group accounts.**

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(a) An application for a group account shall show:

(1) Name, address, and established Division of Workforce Services account number of member employing units;

(2) Name and address of the authorized group representative;

(3) Signatures of each employing unit member; and

(4) An authorization for the representative named by the group to:

(A) Act for the group; and

(B) Allocate the determined legal liability to each member of the group.

(b) A group account shall be terminated upon request received not less than one (1) calendar quarter prior to the proposed effective date or at the discretion of the Director of the Division of Workforce Services.

(c) The division shall:

(1) Issue a quarterly listing within thirty (30) days after the close of a calendar quarter, or as soon thereafter as possible, for each group account with respect to the combined benefit charges of all members of the group; and

(2) Mail such listing to the last known address of the authorized representative of the group.

(d) An active employing unit which is a member of a continuing group account may withdraw from such group provided that:

(1) If there are two (2) or more employers remaining in the group, the authorized representative submits an amended application notifying the division of such intention not less than one (1) calendar quarter prior to the effective date of withdrawal; and

(2) If the withdrawal will eliminate the group account, the authorized representative shall file an amended application to terminate the group status not later than one (1) quarter prior to the effective date of such application.

(e) An active employer may be added to an existing authorized group account provided that the authorized representative submits an amended application to the division for approval no later than one (1) calendar quarter prior to the effective date of the proposed amended group account.

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**11 CAR § 1-209. Contribution rates, voluntary payments, and election of annual payroll.**

(a)(1) Pending a redetermination of the rate of contribution payable by an employer where an application for a review and redetermination has been filed, the employer shall be liable for the payment of contributions at the rate as determined by the Division of Workforce Services.

(2) If the contribution rate is changed by reason of this review and redetermination, the division shall, without application by the employer, make an adjustment thereof in connection with subsequent contribution payments.

(b) All voluntary payments to the Unemployment Compensation Trust Fund Account made by an employer under Arkansas Code § 11-10-705 shall be so identified by the employer when the payment is made.

(c) Any employer that has been subject to three (3) or more years of benefit risk immediately preceding the computation date, and that voluntarily elects to use as its average annual payroll the total taxable wages paid by it during the preceding calendar year, shall for each rate year give written notice of such election to the division not later than July 31 immediately preceding the rate year.

**11 CAR § 1-210. Employing units — Keeping of records.**

(a) Each employing unit shall keep payroll records regarding any individual employed by it so that from an inspection thereof it shall be possible to determine with respect to each worker in its employ:

- (1) The pay period covered by any payroll;
- (2) The Social Security number of each worker employed during any pay period;
- (3) The full name of each worker employed during any pay period;
- (4) The place of employment;
- (5) The date each worker was hired, rehired, or returned to work after a temporary layoff;

(6) All remuneration including commissions and bonuses paid to each worker for personal services with respect to any day of work, in each case showing separately:

(A) Cash remuneration;

(B) The reasonable value of a remuneration in any medium other than cash; and

(C) Special payments, such as bonuses, gifts, prizes, etc., showing separately those paid in cash and those paid in any medium other than cash;

(7) Amounts paid the worker as allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of such expenditures actually incurred and accounted for by him or her; and

(8) With respect to pay periods in which he or she performs both employment and nonsubject work, the number of:

(A) Hours spent in employment; and/or

(B) Hours spent in nonsubject work.

(b) The place of employment of any worker shall be the county within Arkansas:

(1) In which he or she performs his or her work;

(2) In which he or she has his or her base of operations, if he or she performs his or her work in more than one (1) county in Arkansas;

(3) From which he or she received his or her principal or immediate direction or control, if he or she has no base of operations in Arkansas; or

(4) In which he or she resides, if the place from which he or she received his or her principal direction or control is outside of Arkansas.

(c)(1) It shall be the responsibility of the employing unit to make such records available for inspection at a specified location in the state of Arkansas.

(2) If the location is not at the employer's principal place of business, it shall be subject to approval by the Division of Workforce Services.

(d) All employer records designated in this section shall be preserved and made available for purposes of inspection for a period of not less than five (5) years from the end of the month next following the end of the calendar quarter to which such records pertain.

**11 CAR § 1-211. Employing units — Provision of records to the Division of Workforce Services.**

(a) Information requested in report forms provided by the Division of Workforce Services shall be provided by the employing unit in accordance with instructions accompanying the forms.

(b) Every individual or legal entity which becomes an employing unit as defined in Arkansas Code § 11-10-208 shall, on or before the last day of the month next following the month during which it became an employing unit, file with the division an initial Report to Determine Liability form and such additional reports as the Director of the Division of Workforce Services may require for the purpose of determining whether it is an employer as defined in Arkansas Code § 11-10-209.

(c) Any employing unit that employs workers during any calendar year which considers that it is not an employer as defined in Arkansas Code § 11-10-209 must establish such proof by submitting contracts, reports, and/or other documents with the Report to Determine Liability form.

(d) Any employer:

(1) That terminates its business for any reason whatsoever, or transfers or sells all or a substantial part of the assets of its organization, trade, or business to another or changes the trade name of such business or address shall:

(A) Within ten (10) days after such termination, transfer, or change of name or address, give notice in writing to the division of that fact; and

(B) Set forth in such notice the former name and address of the business, the new name and address of the business, the name of any new owner, and the employer's own name and present address; and

(2) Shall immediately notify the division of the commencement of any receivership or similar proceedings, or of any assignment for benefit of creditors or any order of court under the laws of Arkansas with respect to the foregoing or of the filing of any voluntary or involuntary petition in bankruptcy or other proceedings under the federal Bankruptcy Act, 11 U.S.C. § 101 et seq.

**11 CAR § 1-212. Notice of claims filed and benefits charged, employer response, and noncharge rights.**

(a)(1) Notice of an initial or additional claim filed shall be mailed or otherwise provided by the Division of Workforce Services to the employing unit known to the claimant as his or her last employer.

(2) This notice shall request that the employer immediately furnish pertinent information to the division.

(3)(A) The last employer shall have ten (10) days from the date the notice was mailed or otherwise provided by the division to file its response.

(B) If mailed, a response shall be considered to have been filed as of the date of the postmark on the envelope.

(4) Provided that if it is determined by the Director of the Division of Workforce Services that the response was not filed within the ten-day period as a result of circumstances beyond the last employer's control, such response may be considered as having been timely filed.

(b)(1) Notice to base period employer of an initial claim filed shall be mailed or otherwise provided to each affected base period employer who is not also a last employer.

(2) This notice shall request that the employer furnish the division pertinent information.

(3)(A) The requested information shall be filed with the division immediately but no later than fifteen (15) days after the date the notice was originally mailed or otherwise provided by the division.

(B) If mailed, the response shall be considered to have been filed as of the date of the postmark on the envelope.

(4) Provided that if it is determined by the director that the response was not filed within the fifteen (15) day period as a result of circumstances beyond the employer's control, such response may be considered as having been timely filed.



(c)(1) Requests for separation information shall be mailed or otherwise provided by the division to the employing unit known to the claimant as his or her last employer.

(2)(A) This request shall notify the last employer of the deadline for providing the requested information to the division.

(B) If mailed, a response shall be considered to have been filed as of the date of the postmark on the envelope.

(3) Provided that if it is determined by the director that the response was not filed within the specified time in the request for separation information as a result of circumstances beyond the last employer's control, such response may be considered as having been timely filed.

(d) Upon commencement of a labor dispute, the affected employer shall, upon request, promptly furnish the nearest division office a list, in duplicate, showing the names and Social Security numbers of the unemployed workers and the last day of employment for each worker, with the further information that the unemployment is due to a labor dispute at the factory, establishment, or other premises where the workers were last employed.

(e)(1)(A) An employer, upon request, shall furnish to the division wage information for workers filing claims in another state under an approved interstate combined-wage plan when such wages are in the base period of the paying state but have not yet been reported on a quarterly wage report.

(B) An employer shall furnish such information within ten (10) days from the date the request is mailed.

(2)(A) Whenever an employer fails to provide wage information as requested for an interstate combined-wage plan claim within the required ten (10) days from the time the request is mailed, the division will establish the claimant's wage credits on the basis of the claimant's written statement of wages received for such employment with said employer supplemented by such other evidence as may be available and satisfactory to the division.

(B) Except, as provided under Arkansas Code § 11-10-106 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., if it is determined that

the wage information supplied by the claimant is erroneous, no penalty shall be imposed on the claimant.

(3) A report of wages made on the basis of the claimant's written statement shall be adjusted, if necessary, upon receipt of information from an employer and such adjusted report will be delivered to the paying state for the appropriate adjustment of further benefits, if any, payable to the claimant under the approved interstate combined-wage plan on the basis of such wage credits.

(f)(1) Except as hereinafter provided, a last employer shall not be eligible for the noncharge provisions authorized in Arkansas Code § 11-10-703 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., unless it has timely responded in compliance with subsection (a) of this section.

(2)(A) It shall be assumed that any last employer that fails to respond in compliance with subsection (a) of this section agrees that the reason for separation as given by the claimant is correct.

(B) Its failure to respond shall not affect its noncharge rights if the reason for separation given by the claimant would have otherwise resulted in the noncharging of benefits to the employer's account.

(3) The employer's failure to timely respond, however, shall constitute a waiver of any right it may have to protest charges to its experience rating account of benefits paid as a result of such nonmonetary determination.

(g)(1)(A) No employer's account shall be relieved of charges arising from an overpayment of benefits as provided in Arkansas Code § 11-10-703 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., if:

(i) The overpayment of benefits is the result of the failure of the employer or the employer's agent to respond timely or adequately to a request for information from the division; and

(ii) The employer's agent has established a pattern of failing to respond to such requests.

(B) As used in this part:

(i) "Adequately" means the employer or the employer's agent substantially and accurately completed the division's forms with sufficient factual information necessary to render an accurate determination of eligibility for unemployment insurance benefits;

(ii)(a) "Pattern" means, in the preceding calendar quarter, the employer or the employer's agent failed to timely or adequately respond to at least fifty-one percent (51%) of requests for information sent to it by the division related to the establishment of an unemployment insurance claim.

(b) However, an employer that is party to five (5) or fewer potentially disqualifying determinations during the preceding calendar quarter shall not be deemed to have a pattern of failing to timely or adequately respond unless it has failed to respond to at least three (3) requests for information in the preceding calendar quarter; and

(iii)(a) "Timely" means the employer or the employer's agent responded to the division's written requests for information as specified on the form.

(b) Provided that if it is determined by the director that the response was not timely as a result of circumstances beyond the employer's control, such response may be considered as having been timely filed.

(2)(A) At the end of each calendar quarter, or as soon thereafter as possible, the division shall notify an employer or its agent of the intent to place the employer on a list of employers that have been determined to have established a pattern of failing to timely or adequately respond to requests for information from the division.

(B)(i) The notification shall become conclusive and binding upon the employer unless within fifteen (15) days after the mailing of the notice the employer requests an administrative review of the notice issued by the division.

(ii) Provided that if it is determined by the director that the response was not filed within the fifteen-day period as a result of circumstances beyond the employer's control, such response may be considered as having been timely filed.

(C) An employer that is determined to have established a pattern of failing to timely or adequately respond to requests for information shall continue to remain on

the list of employers ineligible to be provided relief from charges pursuant to Arkansas Code § 11-10-703(a)(6) until the employer has responded timely or adequately to requests for information for two (2) consecutive calendar quarters.

(3) Determinations by the division prohibiting the relief of charges pursuant to subsection (g) of this section shall be subject to protest or appeal as set forth in Arkansas Code § 11-10-707 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq.

(h)(1) An affected base period employer not also a last employer shall not be eligible for the noncharge provisions authorized in Arkansas Code § 11-10-703 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., unless it has timely responded in accordance with subsection (b) of this section.

(2) In addition, any employer seeking to qualify for noncharging under the part-time provision of Arkansas Code § 11-10-703 of the Division of Workforce Services Law, Arkansas Code § 11-10-101 et seq., shall provide such information on wages and hours of work as the director shall request.

### **11 CAR § 1-213. Lessor employing units.**

(a)(1) Any lessor employing unit desiring to post a bond with the Division of Workforce Services in accordance with Arkansas Code § 11-10-717(e), shall:

- (A) Also execute a surety bond prepared or approved by the division; and
- (B) Provide the division with any information necessary to prepare this

bond.

(2) Any bond not prepared by the division shall be submitted to the division for approval prior to its being executed.

(b)(1) Any lessor employing unit depositing cash or securities with the division in accordance with said Arkansas Code § 11-10-717(e) shall:

(A) Also execute an assignment and escrow agreement prepared by the division; and

(B) Provide the division with any information necessary to prepare the agreement.

(2) This agreement shall contain a provision which the lessor employing unit consents to an audit of its records prior to the release or cancellation of the securities tendered with the agreement.

(c)(1) Any securities deposited with the division pursuant to said Arkansas Code § 11-10-717(e) shall be accompanied by the signed statement of a licensed broker identifying each security and setting forth its current market value.

(2) Thereafter, on or before the tenth day of each month, the lessor employing unit shall submit:

(A) A statement signed by a licensed broker setting forth the market value on the first business day of that month of each security so deposited; and

(B) An attestation by said broker stating that he or she has no interest in and is not affiliated in any way with the lessor employer or the corporations that issued the stocks included in the said market value statement.

(3) Should the combined value of those deposited securities be less than the required amount, the lessor employing unit shall immediately deposit additional securities to raise the value to the required amount.

(d) By the end of February each year, the Director of the Division of Workforce Services shall notify any lessor employing unit that has posted a corporate surety bond or deposited marketable securities with the division of the dollar amount required for that year to comply with the provisions of said Arkansas Code § 11-10-717(e).

(e)(1) The obligation for payment, and/or the bond securing payment, of unemployment contributions pursuant to Arkansas Code § 11-10-717(e) shall not be released until the division is satisfied, either by audit or otherwise, that all contributions liability on account of the bond has been paid.

(2) This subsection (e) of this section shall not be construed to:

(A) Increase the liability of the surety in excess of the face amount of the bond regardless of the period of time the bond remains in effect; nor

(B) Affect the right of any surety to terminate the bond in accordance with the terms of the bond.

**11 CAR § 1-214. Determination of employer when sickness or accident disability payments are made by a third party.**

(a)(1) Any third party making a payment on account of sickness or accident disability which payment is not excluded from the term "wages" under Arkansas Code § 11-10-215(2)(B) shall be treated as the employer with respect to such wages, except as may be provided in subsections (b) and (c) below.

(2) Accordingly, such third party must pay the contributions or make payments in lieu of contributions as imposed on employers by and in accordance with the provisions of Arkansas Code §§ 11-10-701 – 11-10-715(a).

(b)(1) If any third party that is treated as the employer solely by reason of its having made a payment on account of sickness or accident disability which payment is not excluded from the term "wages" under Arkansas Code § 11-10-215(2)(B) notifies the employer for which services are normally rendered of the amount of the payment made on account of sickness or accident, then the employer for which services are normally rendered (and not the third party) shall be required to:

(A) Pay the contributions; or

(B) Make payments in lieu of contributions as imposed on the employer by, and accordance with, the provisions of Arkansas Code §§ 11-10-701 – 11-10-715(a).

(2) Such notification must be made or postmarked on or before the seventh day following the last day of the calendar quarter in which the payment was made.

(c)(1) Any third party making a payment on account of sickness or accident disability to an employee as agent for the employer or making such a payment directly to the employer shall not be treated as the employer with respect to such payment unless the agency agreement so provides.

(2) An agency relationship is established if the third party bears an insurance risk, or is reimbursed on a cost plus fee basis, even if the third party is responsible for making determinations of the eligibility of individual employees of the employer for whom services are normally rendered for payments on account of sickness or disability.

**11 CAR § 1-215. Employer coverage hearings.**

(a)(1) The hearing officer in employer coverage matters shall be a person designated as such in writing by the Director of the Division of Workforce Services.

(2) Such designation shall remain in effect until such time as it is revoked in writing by the director.

(b)(1) All employer coverage hearings shall be conducted at the administrative office of the Division of Workforce Services in Little Rock by telephone, or in person at the discretion of the hearing officer.

(2) The hearing officer shall set the time and date of such hearings, giving reasonable notice to all interested parties.

(3) The hearing officer may, upon his or her own motion or upon request of a party for good cause shown, reschedule the hearing time and/or date provided such request is received prior to the scheduled time of the hearing.

(c) The hearing officer may require the parties, prior to the hearing, to provide to him or her and/or to exchange with each other information including, but not limited to:

- (1) Names and addresses of representatives who are to appear;
- (2) Names, addresses, and telephone numbers of potential witnesses;
- (3) Lists and descriptions of exhibits to be introduced; and
- (4) Theories of liability or nonliability, including citations to pertinent statutes and case precedent.

(d)(1) The hearing officer shall conduct himself or herself in an impartial manner and may at any time withdraw if he or she deems himself or herself disqualified.

(2) Any party may file an affidavit of personal bias or disqualification, which shall be ruled on by the hearing officer and granted if timely made, sufficient, and filed in good faith.

(3)(A) If the hearing officer withdraws, he or she shall so advise the director in writing.

(B) The director shall then appoint another hearing officer to conduct the hearing from which the usual hearing officer has disqualified himself or herself.

(e) The hearing officer shall have power to:

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- (1) Administer oaths and affirmations;
- (2) Take depositions;
- (3) Issue subpoenas to compel the:
  - (A) Attendance of witnesses; and
  - (B) Production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence;
- (4) Maintain order;
- (5) Rule upon all questions arising during the course of a hearing;
- (6) Generally regulate and guide the course of the pending proceeding; and
- (7) Make recommended decisions to the director.

(f) Any person or party appearing at a hearing shall have the right to be accompanied and advised by legal counsel.

(g)(1) The hearing officer shall not be bound by common law or statutory rules of evidence or by technical rules of procedure.

(2) However, any hearing shall be conducted in such manner as to ascertain the substantial rights of the parties.

(h) Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(i)(1) Official notice may be taken of judicially cognizable facts and of generally recognized technical facts within the division's specialized knowledge.

(2) Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded reasonable opportunity to show the contrary.

(j)(1) A record shall be kept of all testimony and proceedings.

(2) However, the testimony will not be transcribed unless the hearing officer's determination is appealed.

(k) The hearing officer shall issue recommended findings of fact and, on the basis thereof, recommended determinations for the director's approval and signature with respect to employer coverage.

(l) If the party which made application for the hearing fails, without good cause shown, to appear at the scheduled hearing, the hearing officer shall:

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- (1) Admit into the record the relevant division file or files; and
- (2) Make his or her determination on the evidence contained therein and any evidence submitted by any interested party or parties who appear for the scheduled hearing.

(m) In case of refusal to obey a subpoena issued by the hearing officer, such hearing officer shall have the power to continue the hearing, on his or her own motion or on motion of the party who requested the subpoena, until such time as the person who refuses to obey the subpoena is either ordered to comply with or is relieved of complying with said subpoena by a court of competent jurisdiction.

### **Subpart 3. Training Trust Fund Program**

#### **11 CAR § 1-301. Training Trust Fund Program.**

(a) The Division of Workforce Services Training Trust Fund Program is hereby established pursuant to Acts 2007, No. 551, as enacted by the Arkansas General Assembly.

(b) **Purpose.**

(1)(A) The purpose of the Division of Workforce Services Training Trust Fund Program is to provide for innovative training support opportunities for qualified Arkansas employers.

(B) Specifically, the Division of Workforce Services Training Trust Fund will primarily be used to support Arkansas employers in their respective efforts to provide training for prospective, new, and incumbent workers.

(C) The benefit of the fund is that it can be used to help fill certain gaps in skills development training that may be otherwise unavailable.

(2) The fund initiative will be coordinated with both the:

(A) Arkansas Existing Workforce Training Program, which is administered by the Arkansas Economic Development Commission; and

(B) Arkansas Incumbent Worker Training Program, which is administered in accordance with the federal Workforce Investment Act of 1999 by the Arkansas Workforce Investment Board [abolished].

**(c) Who may apply for the funds.**

(1)(A) Any for-profit or nonprofit employer that has been in operation in Arkansas during the entire twelve-month period immediately preceding the date of application.

(B) Exceptions may be considered on an individual basis.

(2) Employers making application for training funds must be current on all tax obligations, and there must not currently exist any ongoing or pending litigation concerning the employer's tax liability, either federal or state.

**(d) How to apply.**

(1)(A) Employers must submit an application to the Director of the Division of Workforce Services, # 2 Capitol Mall, PO Box 2981, Little Rock, AR 72203, a minimum of thirty (30) days prior to commencement of training.

(B) Questions can be answered by calling 1-855-225-4440 or 501-682-2121.

(2) Applications must include a clear description of proposed training to include the proposed training provider and projected cost.

(3) Exceptions may be considered on an individual basis.

**(e) Requirements for applicant employers to utilize these training funds.**

(1) The employer must:

(A) Specify a target group of individuals and the type of training to be conducted; and

(B) Provide projected outcomes that are tangible and measurable.

(2) Each trainee must be at least eighteen (18) years of age.

(3) Each trainee must be a United States citizen or authorized to legally work in the United States.

(4) If the trainee is a male born after 12/31/1959, he must be in compliance with the selective service registration requirements.

(5) Provide assurance that participants involved in the proposed training possess the prerequisite literacy skills.

(6) The employer must clearly articulate the relationship of the proposed training to specific goals and performance objectives relative to correction, prevention, or improvement, i.e., training on new equipment to increase production, reduce production cost and reduce waste by recycling.

**(f) Application priority will be given to employers:**

- (1) That can avoid layoffs by incumbent worker training;
- (2) That can maintain and/or create new jobs by training prospective employees;
- (3) That seek to upgrade employee skills and increase productivity;
- (4) Whose funding request is to provide training and employment opportunities to recipients of public assistance and other low-income individuals;
- (5) That can certify expansion; and
- (6) That will replicate the training internally, the train the trainer concept.

**(g) Allowable use of funds:**

- (1) Training on use of cutting-edge technology and equipment;
- (2) Training to meet employer or industry-specific skill requirements;
- (3) Train the trainer;
- (4) The purchase and/or development and production of training materials necessary to conduct the approved training;

(5)(A) To compensate state supported institutions of higher education (two/four year Arkansas colleges/universities, technical schools), the Arkansas Workforce Investment Board [abolished] approved training providers and approved company consultants and contract instructors, as well as internal trainers for conducting prescribed training.

(B) Employer must provide certification of consultants and other contract instructors.

(C) Training may be:

- (i) In a traditional classroom;

- (ii) On-the-job training;
- (iii) Distance-learning lab;
- (iv) Workshops;
- (v) Seminars;
- (vi) Site-based training; or
- (vii) Computer-based training; and

(6) Other training methods as approved by the director.

**(h) Nonallowable use of funds:**

- (1) Cost incurred prior to the approved date of application;
- (2) Construction or purchase of facilities or buildings;
- (3) Relocation expenses;
- (4) Employment or training in sectarian activities;
- (5) Lobbying activities;
- (6) Trainee wages; and
- (7) Exceptions may be considered on an individual basis.

**(i) Assurances:**

(1) The applicant (employer) assures that records of expenditures of funds under this agreement shall be made available for inspection by division audit staff or state auditors, as required;

(2) The applicant (employer) assures that no person shall be excluded from training on the basis of:

- (A) Race;
- (B) Color;
- (C) National origin;
- (D) Age;
- (E) Religion;
- (F) Marital status;
- (G) Sex; or
- (H) Disability;

(3) The applicant (employer) assures that in the event of a labor dispute or strike, the director may postpone or cancel the funding of training support;

(4) The applicant (employer) understands that this agreement may be canceled by the director by written notification at least fourteen (14) days prior to cancellation, or immediately, if funds are not available;

(5) The applicant (employer) agrees that the terms of this agreement may be changed by common consent; and

(6) The applicant (employer) assures that provision will be made for submission of a final report, which will include a description of the funded program with quantifiable outcomes.

(j) The review of applications will be coordinated with the following state agencies:

(1) Arkansas Economic Development Commission;

(2) Arkansas Workforce Investment Board [abolished]; and

(3) Division of Workforce Services.