

DEFINITIONS AND GENERAL PROVISIONS

16 VAC 5-10-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Virginia Unemployment Compensation Act as set out in Title 60.2 (§60.2-100 et seq.) of the Code of Virginia.

"Additional claim" means a claim for unemployment compensation benefits filed within an existing benefit year by a claimant who has had an intervening period of employment since filing a prior claim.

"Agent state" means any state in which an individual files a claim for benefits from another state.

"Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"Area of high unemployment" means that geographic area of Virginia, including all cities and counties served by a particular ~~full-service unemployment insurance~~ field office, where the average unemployment rate as determined by the commission has been 10% or more during the first ~~four~~ of the last ~~five~~ two completed calendar quarters. ~~A full-service unemployment insurance office is any office offering tax, benefits and adjudicatory services.~~

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"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

"Cash value of remuneration" means the value of rent, housing, lodging, board, or any other payment in kind, in addition to or in lieu of money wages, as agreed upon by the employing unit and the worker at the time of entering into the contract of hire or thereafter. If there is no such agreement, the value thereof shall be an amount equal to a fair estimate of what the worker would, according to his custom and station, pay for similar goods, services, or accommodations in the same community at premises other than those provided by the employing unit.

"Combined-wage claimant" means a claimant who has covered wages under the unemployment compensation law of more than one state and who has filed a claim under the Interstate Arrangement for Combining Employment and Wages.

"Commission" means the Virginia Employment Commission as defined in §60.2-108 of the Code of Virginia.

"Continued claim" means a request for the payment of unemployment compensation benefits which is made after the filing of an initial claim.

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“Ex Parte Communication” means any communication with the presiding appeals examiner or special examiner, regardless of the medium, not in the agency’s record regarding substantive, procedural or other matters which could be reasonably expected to influence the outcome of the case or case decision pending before the agency and for which reasonable notice to all parties is not given at the time of the communication.

“Parties” shall include claimants, and any employers or employing units that have a direct interest in the outcome of the pending case.

“Field office” means an office of the commission, which may include one-stop centers, job information, referral services, and unemployment insurance services.

"Initial claim" means any new, additional, or reopened claim for unemployment compensation benefits.

"In-person hearing" means a hearing where the parties, witnesses and representatives personally appear before the appeals examiner or special examiner.

"Interstate Benefit Payment Plan" means the plan approved by the ~~Interstate Conference of Employment Security~~ National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

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"Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the commission finds that this exclusion would create undue hardship on such claimants in specified areas.

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under 16 VAC 5-50-10 et seq. is sent for its approval and "interested agency" means the agency of such jurisdiction.

~~"Job service office" means an office of the commission providing job information and referral services.~~

"Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

"Liable employer" means the employing unit for whom a claimant last worked during 30 days, whether or not such days were consecutive, or for 240 hours, prior to filing an initial, additional or reopened claim for benefits.

"Liable state" means any state against which an individual files, through another state, a claim for benefits.

"Mass separation" means a separation (permanently, for an expected duration of at least seven days, or for any indefinite period) at or about the same time and for the same

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reasons (i) of at least 20% of the total number of workers employed in an establishment, or (ii) of at least 50% of the total number of workers employed in any division or department of any establishment, or (iii) notwithstanding any of the foregoing, a separation at or about the same time and for the same reason of 25 or more workers employed in a single establishment.

"New claim" means a claim for unemployment compensation benefits filed in person at ~~an unemployment insurance~~ a field office, or other location designated by the commission, by an individual who does not have an existing benefit year established.

"Partially unemployed individual" means an individual who during a particular week (i) had earnings, but less than his weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary full-time hours for such regular employer because of lack of full-time work.

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the Interstate Arrangement for Combining Employment and Wages and whose adherence thereto has not terminated.

"Part-total unemployment" means the unemployment of any individual in any week of less than full-time work in which he earns some remuneration (but less than his weekly benefit amount) and during which he is not attached to a regular employer; or, in any week in which he has wages such as holiday or vacation pay which are less than his

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weekly benefit amount, but where no actual work has been performed regardless of his attachment to a regular employer.

"Paying state" means (i) the state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages, and combining will increase either the weekly benefit amount or the maximum benefit amount, or (ii) if the state in which a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in (i) above, or if the combined-wage claim is filed in Canada or the U.S. Virgin Islands, then the paying state shall be that state where the combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages.

"Regional adjudication centers" means a service location designated by the commission as an official station for agency staff who are primarily involved in adjudication of disputed benefit and tax liability issues. A regional adjudication center may be co-located with or incorporated into other agency service locations, including one-stop centers.

"Reopened claim" means the first claim for unemployment compensation benefits filed within an existing benefit year after a break in the claim series caused by any reason other than intervening employment.

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"Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

"Severance and dismissal pay" means, for the purpose of taxation and benefits, all payments made by an employer at or subsequent to an employee's separation, except that payments which are exclusively for services performed prior to separation shall not be treated as severance or dismissal pay. Such payments may be allocated by the employer for any period following separation so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

"Split hearing" means an in-person hearing where one or more parties, representatives or witnesses are allowed to participate telephonically.

"State" means one of the United States, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

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"Telephone hearing" means a hearing where all parties, witnesses and representatives participate before the appeals examiner by way of a telephone conference call.

"Total unemployment" means the unemployment of an individual for any week in which he performs no work and has no wages payable to him, regardless of whether or not he is attached to an employing unit's payroll.

"Transferring state" means a state in which a combined-wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.

~~"Unemployment insurance office" means an office of the commission providing unemployment insurance services.~~

16 VAC 5-10-20. Development of regulations.

A. Pursuant to § 9-6.14:7.1 of the Code of Virginia, the commission shall solicit the input of interested parties in the formulation and the development of its rules and regulations.

The commission shall receive petitions from any party proposing new regulations or amendment of existing regulations. All such proposals shall be reviewed by the commission and receive response within 180 days. Formulation and development of all

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new or amended regulations shall be subject to the following public participation guidelines.

B. Interested parties for the purpose of this regulation shall be:

1. The Governor's Cabinet Secretaries.
2. Members of the Senate Committee on Commerce and Labor.
3. Members of the House Committee on Labor and Commerce.
4. ~~Members of the State Advisory Board.~~ Special interest groups known to the Virginia Employment Commission.
- 6 5. Any individual or entity ~~requesting~~ submitting a written request to be included as an interested party.
- 7 6. Those parties who have expressed an interest in VEC regulations through oral or written comments in the past.

C. An ad hoc advisory committee will be established to develop regulatory changes upon petition of 5 or more people during the Notice of Intended Regulatory Action public comment period established pursuant to § 9-6.14:7.1.B. Such ad hoc advisory committee shall be chosen from individuals registering with the agency as interested parties and shall include representatives of business, labor, the bar, and public interest associations.

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D. Prior to the formulation of a proposed regulation, notice of an intent to draft a regulation shall may appear in a ~~Richmond newspaper and may appear in any newspaper~~ circulated in localities particularly affected by the proposed regulation and on the commission's web page. Other media may also be utilized where appropriate, including but not limited to, trade or professional publications. Notice of an intent to draft a regulation shall also be mailed to all interested parties and shall be posted in all VEC offices across the Commonwealth and on the Virginia Regulatory Town Hall. These individuals, groups and the general public shall be invited to submit written data, views, and arguments on the formulation of the proposed regulation to the commission at its administrative office in Richmond, Virginia.

~~D~~E. Publication of the intent to draft a regulation, as well as the proposed regulation, shall also appear in The Virginia Register of Regulations and on the Virginia Regulatory Town Hall.

~~E.~~ ~~The Virginia Employment Commission intends for the State Advisory Board to participate in all meetings of the agency's Regulatory Review Committee during the process in which regulatory amendments are being formulated. Any proposed amendments shall be submitted to members of the advisory board and to special interest groups and others registering interest in working with the commission. If sufficient interest is expressed to the commission in forming additional advisory groups, the commission will constitute such advisory groups as may be appropriate to solicit a full~~

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~~range of views. These groups shall be invited to submit data, views, and arguments regarding the proposed amendments. Any responses to such solicitation shall be considered by the commission in its deliberations.~~

F. Failure of any interested party to receive notice to submit data, views, or oral or written arguments to the commission shall not affect the implementation of any regulation ~~otherwise~~ if such regulation was formulated, developed and adopted ~~pursuant to~~ in compliance with the Administrative Process Act, Chapter 1.1:1 (§9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

G. The public participation guidelines of this regulation shall not apply to emergency regulations or those regulations excluded or exempted by any section of the Administrative Process Act.

H. During the formal procedures required by the Administrative Process Act and these public participation guidelines, written input will be solicited from interested parties and the general public. At the discretion of the commission, and in accordance with applicable law, one or more public hearings ~~will~~ may be held in Richmond ~~and~~ or at any other location deemed appropriate to ensure adequate public participation.

16 VAC 5-10-30. Review of regulations.

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At least ~~yearly~~ every three years, or more often as may be mandated by statute or Executive Order, a regulatory review committee consisting of ~~one member from each division and office of the commission~~ staff shall meet to review these regulations and general rules. The committee shall recommend deletion and amendment of the existing rules and regulations, and additions thereto, as needed, in light of their impact upon the general public and employers.

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16 VAC 5-60-10. Total and part-total unemployment.

A. An individual's week of total or part-total unemployment shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day he files his claim at the ~~local unemployment insurance~~ field office and registers ~~with a Job Service office~~ for work, except as provided in subdivisions 1 and 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such ~~employment~~ unemployment, provided the individual reports as required by subsection C of this section. An initial claim may be filed in-person at a field office, or at the discretion of the commission, by telephone or Internet. Upon implementation of a telephonic claims process, the in-person filing of initial claims shall be discontinued except where circumstances preclude the filing of claims by any other method.

1. A week of total or part-total unemployment of an individual located in an area served only by the itinerant service of the commission shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of such individual's unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity following the commencement of his total or part-total unemployment except as provided in subdivision 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such unemployment provided the individual reports as required by subsection C of this section.

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2. A week of total or part-total unemployment of an individual affected by a mass separation ~~or a labor dispute~~ with respect to which arrangements are made for group ~~reporting~~ filing by the employer shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of his unemployment provided that the group ~~reporting~~ filing is conducted within 13 days following the first day of unemployment.

B. Whenever an employing unit receives an Employer's Report of Separation and Wage Information form from the commission informing it that an individual has filed a claim for benefits, such employing unit shall, within ~~five~~ eight calendar days ~~after receipt of such information form~~ from the date of mailing, complete the report and return it to the office from which the informatory notice was sent. That portion of the Employer's Report of Separation and Wage Information to be completed by the employing unit shall set forth:

1. The date the worker began working;
2. The last day on which he actually worked;
3. A check mark in the block indicating the reason for separation and a brief statement of the reason for the separation;

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4. Such other information as is required by such form. The employing unit's official name and account number, if any, assigned to such employing unit by the commission shall appear on the signed report;

5. The name and title of the official signing the report shall be provided as well as certification that the information contained in the report is accurate and complete to the best knowledge of that official.

C. In cases involving a mass separation, as defined in 16_VAC_5-10-10, an employer shall ~~file~~ not be required to file individual reports for such workers as otherwise provided by this section if such employer files a list of workers involved in the mass separation with the unemployment insurance office nearest such workers' place of employment within 24 hours of the date of separation (except as provided below), and shall not be required to file individual reports for such workers as otherwise provided by this section. commission as soon as the details of the layoff are known, but no later than 24 hours after the date of separation. Such list shall include the workers' social security account numbers and any other information the commission may require.

~~Where the total unemployment is due to a labor dispute, the employer shall file with the local unemployment insurance office nearest his place of business, in lieu of a mass separation notice or individual workers separation notices, a notice setting forth the existence of such dispute and the approximate number of workers affected. Upon request~~

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~~by the commission, such employer shall furnish to the commission the names and social security account numbers of the workers ordinarily attached to the department or the establishment where unemployment is caused by a labor dispute.~~

D. To file a claim for benefits, a claimant shall ~~appear personally at the unemployment insurance office most accessible to him or at a location designated~~ report in a manner prescribed by the commission, and shall ~~there~~ file a claim for benefits setting forth (i) his unemployment and that he claims benefits, (ii) that he is able to work and is available for work, and (iii) such other information as is required. A claim for benefits, when filed, may also constitute the individual's registration for work. Upon written request by the claimant, an initial claim for benefits, not to include combined-wage claims, may be cancelled if: (1) the request is made within the appeal period shown on the monetary determination; (2) there has been no payment made on the claim; and (3) the deputy has not rendered a determination based on the claimant's separation from employment. Notwithstanding the foregoing, a claim that was filed in error by an employer on behalf of a claimant may be cancelled upon the claimant's written request. All records of a cancelled claim shall be deleted from the agency's automated benefits database. Upon written request by the claimant, a claim may be withdrawn if the commission determines that the provisions of § 60.2-107 of the Code of Virginia have been met and any benefits paid the claimant have been repaid.

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Combined wage claims may be cancelled under the provisions set forth in 16 VAC 5-70-20.B.

1. Except as otherwise provided in this section the claimant shall continue to report as directed during a continuous period of unemployment. ~~The commission, however, for reasons found to constitute good cause for any claimant's inability to continue to report to the unemployment insurance office at which he registered and filed his claim for benefits, may permit such claimant to report to any other unemployment insurance office.~~

2. The commission shall permit continued claims to be filed by mail, or such other means as the commission may authorize, unless special conditions require or allow in-person reporting. Such special conditions may include:

- a. When a claimant is reporting back to claim his first week(s) after filing an initial, additional, or reopened claim and he has not returned to work in the meantime;
- b. When a claimant needs assistance in order to completely and accurately fill out his claim forms so as to avoid delays in processing his claims by mail;
- c. When, in the opinion of the ~~local unemployment insurance~~ field office manager or deputy, there is a question of eligibility or qualification which must be resolved through an in-person interview;

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d. When a claimant who would normally be reporting by mail receives no additional claim forms and he wishes to continue claiming benefits;

e. When a claimant requests to report in person due to problems associated with the receipt of mail.

E. All initial total or part-total unemployment claims shall be effective consistent with the provisions set forth in subsection A of this section, except that an earlier effective date may apply for late filing of claims in the following cases:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;

2. A previous claim was filed against a wrong liable state;

3. Filing was delayed due to circumstances attributable to the commission;

4. A transitional claim is filed within 14 days from the date the Notice of Benefit Year Ending was mailed to the claimant by the commission;

5. When claiming benefits under any special unemployment insurance program, the claimant becomes eligible for regular unemployment insurance when the calendar quarter changes;

6. The wrong type of claim was taken by a ~~local unemployment insurance~~ field office;

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7. With respect to reopened or additional claims only, the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

F. In order to claim benefit rights with respect to a given week, the claimant must file a continued claim form for such week. The first continued claim form must be filed within 28 days of the day the initial claim was filed. Thereafter, subsequent continued claim must be filed within 28 days after the week ending date of the last week claimed. If filing by mail, the postmark date constitutes the date of claim filing with the commission. If no postmark appears on the envelope, the continued claim shall be presumed to be filed on the date it was received by the commission. If the 28th day falls upon a date when the ~~unemployment insurance~~ field office is closed, the final date for filing shall be extended to the next day the office is open. Failure to file a continued claim within the 28-day period will result in the denial of benefits for the weeks in question unless good cause is shown, and an additional or reopened claim must be filed in order to initiate any further claim for benefits. Good cause for a delay in filing may be shown for any of the following reasons:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;
2. Filing was delayed due to circumstances attributable to the commission; or

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3. The claimant can show circumstances beyond his control which prevented or prohibited him from filing earlier.

G. Normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed in order to meet the eligibility requirements of §_60.2-612 of the Code of Virginia. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time as determined by the commission which can be verified from employer information may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached. Attachment will end if the claimant does not return to work as scheduled or if changed circumstances indicate he has become separated.

H. In areas of high unemployment as defined in 16_VAC_5-10-10, the commission has the authority, in the absence of federal law to the contrary, to adjust the work search requirement of the Act. Any adjustment will be made quarterly within the designated area of high unemployment as follows:

1. The adjustment will be implemented by requiring claimants filing claims for benefits through the ~~full-service unemployment insurance~~ office serving an area experiencing a

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total unemployment rate of 10% through ~~19.9~~ 14.9% to make one job contact with an employer each week.

2. The adjustment will be implemented by waiving the search for work requirement of all claimants filing claims for benefits through the ~~full-service-unemployment-insurance~~ office serving an area experiencing a total unemployment rate of ~~20~~ 15% or more.

3. No adjustment will be made for claimants filing claims for benefits through the ~~full-service-unemployment-insurance~~ office serving an area experiencing a total unemployment rate below 10%.

16 VAC 5-60-20. Partial unemployment.

A. With respect to a partially unemployed individual, a week of partial unemployment shall consist of a calendar week beginning on Sunday and ending at midnight on Saturday. Total wages payable to partially unemployed workers are to be reported on a calendar week basis.

B. Upon filing of a new claim for partial benefits in each claimant's benefit year the commission shall promptly notify the employer of such claimant's weekly benefit amount, the date on which his benefit year commenced, and the effective date of the claim for partial benefits. Similar notice shall likewise be given at least once during the

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claimant's benefit year to each subsequent employer to whom the claimant is attached during a period of partial unemployment for which he claims benefits. Upon receipt of the notice the employer shall record this information for use in the preparation of the evidence he is required to furnish periodically as required in subsection C of this section.

C. After the employer has been notified of the benefit year, the weekly benefit amount, and the effective date of the claim for partial benefits of any worker in his employ (pursuant to subsection B of this section) the employer shall, within seven days, furnish the employee with written evidence concerning any week or weeks of partial unemployment which ended on or before the receipt of such notice and which began on or after the effective date of the employee's claim for partial benefits. The employer, until otherwise notified, shall, within 14 days after the termination of any pay period which includes a week or weeks of partial unemployment, and which ends after the date of receipt of such notification, furnish the employee with written evidence concerning his partial unemployment with respect to such week or weeks. Written evidence of partial unemployment required by this subsection shall be furnished by means of a Statement of Partial Unemployment, Form VEC-B-31, or other suitable medium approved by the commission. Such evidence need not be furnished, however, where the worker's earnings for a week of partial unemployment equals or exceeds his weekly benefit amount.

The information contained on such medium shall be in ink or typewritten and shall show:

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1. The name of the employer and employer account number;
2. The name and social security account number of the worker;
3. The date delivered to the worker;
4. The calendar week ending date;
5. The gross amount of wages earned in such week, by day;
6. The reason and the number of days or hours involved where the worker's earnings were reduced for any cause other than lack of work;
7. The following certification, or one similar:

"During the week or weeks covered by this report, the worker whose name is entered worked less than full time and earned less than his weekly benefit amount for total unemployment because of lack of work, or otherwise shown. I certify that to the best of my knowledge, this information is true and correct";

8. A signature (actual or facsimile) by the employer to the above certification or other identification of the authority supplying the evidence.

D. The new claim for benefits for partial unemployment shall be dated to the first day of the beginning of the individual's week of partial unemployment as defined in subsection A of this section. However, in no event shall such new claim be back dated to include a

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week which ended more than 28 days prior to the date the individual was furnished the Statement of Partial Unemployment, or other written evidence concerning his partial unemployment, as provided in subsection C, by the employer.

E.1. Upon filing a claim as specified in subsection D of this section, the commission shall cause the notice referred to in subsection B of this section to be sent to the employer. Thereafter, the employer shall make available to the claimant the Statement of Partial Unemployment, Form VEC-B-31, or other written evidence concerning his partial unemployment, as provided in subsection C of this section. Such written evidence of partial unemployment shall be presented to the ~~local unemployment insurance~~ field office within 14 days after it is delivered to him by the employer, and failure to do so, within that time, shall render the claim invalid as to the week or weeks to which the statement or other evidence relates.

2. For each subsequent week the partial claim is continued the employer shall furnish the claimant with the evidence of partial unemployment as provided in subsection C of this section and the claimant shall continue to present such evidence to the ~~local unemployment insurance~~ field office within 14 days after it is delivered to him by the employer. Failure to do so shall render the claim invalid with respect to the week or weeks to which the statement or other evidence relates.

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3. Notwithstanding the provisions of subdivisions 1 and 2 of this subsection, the commission shall permit the claimant to file a continued claim by mail, or otherwise, in the same circumstances applicable to a claimant for total or part-total unemployment compensation.

F. With respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer.

16 VAC 5-60-30. Disposition of benefit checks payable to a deceased claimant.

If a claimant has met the eligibility requirements of the Act and completed all forms prescribed by the commission prior to his death, upon proof thereof, the check(s) for all benefits due shall be payable to the decedent's estate.

16 VAC 5-60-40. Commission approval of training other than that under Section ~~302~~ 134 of the ~~Job Training Partnership~~ Workforce Investment Act or Section 2296 of the Trade Act.

A. Training shall be approved for an eligible claimant under the provisions of §60.2-613 of the Code of Virginia only if the commission finds that:

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1. Prospects for continuing employment for which the claimant is qualified by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which he resides or is claiming benefits;
 2. The proposed training course of instruction is vocational or technical training or retraining in schools or classes that are conducted as programs designed to prepare an individual for gainful employment in the occupation for which training is applicable. The training course shall require a minimum of 30 hours attendance each week;
 3. The proposed training course has been approved by an appropriate accrediting agency or, if none exists in the state, the training complies with quality and supervision standards established by the commission, or is licensed by an agency of the state in which it is being given;
 4. The claimant has the required qualifications and aptitude to complete the course successfully;
 5. The training does not include programs of instruction which are primarily intended to lead toward a baccalaureate or higher degree from an institution of higher education.
- B. Benefits may be paid to an otherwise eligible claimant while he is attending training only if the commission finds that the claimant is enrolled in and regularly attending the course of instruction approved for him by the commission.

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C. A claimant shall request training approval on forms provided by the commission. The claimant's enrollment and attendance shall be reported to the commission periodically as directed by the ~~local unemployment insurance office to which he reports~~ commission.

FORMS

Continued Claim for Benefits - First Payments, B-3FP (eff. 11/92).

Benefits, Rights, and Responsibilities - Instructions for Person on Temporary Layoff, B-19.

Verification of Offer of Continuing Employment, B-25.

Request for Reconsideration of Monetary Determination, B-28.

~~Employer Instructions for B-31, B-31E.~~

Request for Name/Address/Telephone Number Changes, B-41.

Work Search Requirement, B-76.

~~Prepayment Agreement, BFC-99.~~

Continued Claim for Benefits, VEC-B-3 (rev. 7/93).

Notice of Exhaustion, VEC-B-3a (rev. 8/88).

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~~Instructions for Completion of the Continued Claim for Benefits Form, VEC-B-4M (rev. 1/86).~~

Claim Correction Notice, VEC-B-5M (rev. 9/87).

Appointment Notice, VEC-B-6M (rev. 1/83).

Claim for Benefits, VEC-B-10 (rev. 10/93).

Employer's Report of Separation and Wage Information, B-10SEP (rev. 7/93).

Eligibility Review Interview Notice, VEC-B-11D (rev. 7/88).

Record of Contacts for Employment, VEC-B-11E.

Request for Physician's Certificate of Health, VEC-B-14 (rev. 2/76).

~~Benefit Table, VEC-B-21 (rev. 1/92).~~

Notice to Workers, VEC-B-29 (rev. 10/93).

~~VEC-B-29SP (eff. 10/93).~~

Monetary Determination, VEC-B-30 (rev. 6/90).

Notice of Benefit Liability, VEC-B-30R (rev. 4/93).

Statement of Partial Unemployment, VEC-B-31 (rev. ~~6/1/78~~ 5/95).

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Notification of Claim Filed for Benefits, VEC-B-32 (rev. 9/91).

Unemployment Insurance Handbook for Claimants (rev. 1992). (Although issued for informational purposes only, this booklet contains some interpretative material.)

Claimant's Request for Training Approval, VEC-B-60.7 (rev. 11/94).

~~Notice to Workers (to be posted by employer), VEC B 70 (rev. 12/84).~~

Notice to Trade Readjustment Allowance Claimants Concerning Training, VEC-B-72 (rev. 10/87).

Training Certification, VEC-TB-1 (eff. 1/1/72).

Notice of Child Support Intercept, VEC-CSI-1 (rev. 7/93).

Request for Gross Wages, VEC-BPC-45A (eff. 12/86).

Wage Verification Request, VEC-BPC-65 (rev. 6/90).

Cross Match, VEC-BPC-65A (rev. 6/90).

Billing Statement, VEC-BPC-89 (rev. 5/93).

Consent of Disclosure, VEC-CD-1 (eff. 1/89).

Affidavit of DUA, DUA-1 (rev. 5/78).

Affidavit of Earnings, DUA-2 (rev. 10/76).

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Weekly Request for DUA, DUA-3 (rev. 10/76).

Notice of Overpayment, DUA-4 (rev. 10/76).

Release Authorization, RA-1 (rev. 11/92).

Election of Regular TAA or NAFTA-TAA By Worker, VEC-NAFTA/TAA-1.

Entitlement Determinations to NAFTA Transitional Adjustment Assistance (NAFTA-NAA)/Trade Readjustment Allowances (TRA) Trade Act of 1974, As Amended September 1994, ETA 8-57A.

Request for Verification of Work Search, VEC-B-78 (rev. 11/94). (This form had been numbered as VEC-B-72; the number is being changed to eliminate duplicate numbers.)

INTERSTATE AND MULTI-STATE CLAIMS

16 VAC 5-70-10. Cooperative agreement.

A. This section shall govern the commission in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

B. A week of unemployment for an interstate claimant shall consist of any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

C. Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

D. If a claimant files a claim against any state and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this chapter, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the

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entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

E. Claims for benefits or a waiting period shall be filed by interstate claimants ~~on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed and processed in accordance with the type of week in use in the agent state~~ by mail or other such means as the commission may authorize.

Claims shall be filed in accordance with agent state regulations for intrastate claims in ~~local unemployment insurance~~ field offices, at an itinerant point or by mail.

1. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial claim shall be used to begin a claim series and no continued claim for a past period shall be accepted.
2. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

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F. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state. The liable state may utilize the telephone or mail to directly ascertain facts from the parties.

The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

G. The agent state shall afford all reasonable cooperation in the holding of hearings in connection with appealed interstate benefit claims.

With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state, or the date it was mailed by the claimant, whichever is earlier.

H. This section shall apply in all its provisions to claims taken in and for Canada.

16 VAC 5-70-20. Interstate cooperation.

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A. This section, approved by the Secretary of Labor pursuant to §_3304(a)(9)(B), Federal Unemployment Tax Act and adopted under §_60.2-609 of the Code of Virginia, shall govern the Virginia Employment Commission in its administrative cooperation with other states relating to the Interstate Arrangement for Combining Employment and Wages.

B. A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the unemployment insurance law of the paying state. An initial combined-wage claim may be cancelled if the cancellation request is made within the appeal period shown on the monetary determination. The request for cancellation must be submitted in writing.

C. Benefits, in all cases, shall be paid to a combined-wage claimant from the unemployment insurance fund of the paying state, and all benefit rights shall be determined by the paying state pursuant to its unemployment insurance law.

D. Wages paid to a claimant during the paying state's applicable base period, including wages reported for that period by a transferring state as available for the payment of benefits under the arrangement, shall be included by the paying state in determining such claimant's benefit rights.

Wages, once they have been transferred and used in a determination which established monetary eligibility for benefits in the paying state, shall be unavailable for determining

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monetary eligibility for benefits under the unemployment insurance law of the transferring state, except to the extent that wages are usable for redetermination purposes.

E. Each state, with respect to any combined-wage claimant, in utilizing forms approved by the Interstate Benefit Payment Committee, shall:

1. Promptly request any other state in which the claimant has worked to furnish a report of the claimant's unused covered wages during the base period of the paying state as well as his current eligibility under the law of such state.
2. When acting as the transferring state, report promptly upon the request of any state the amount of any claimant's unused covered wages during the applicable base period and the current monetary eligibility of such claimant under the law of the transferring state.
3. When acting as the paying state, send to each transferring state a copy of the initial determination, together with an explanatory statement.
4. When acting as the paying state, send to the claimant a copy of the initial determination, noting his rights to appeal.
5. When acting as the paying state, send to each transferring state a statement of the benefits chargeable to each state. This is done at the end of each quarter in which any benefits have been paid, and each statement shall include the benefits paid during such quarter as to each combined-wage claimant. The ratio of each charge to total benefits

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paid shall be equal to the ratio of the wages reported by the transferring state (and used in the monetary determination) to the total wages used in the determination.

F. A transferring state shall, as soon as practicable after receipt of a statement as set forth in subsection E, reimburse the paying state accordingly.

G. A claimant's wages shall not be combined, notwithstanding any other provision of this arrangement, if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the interstate benefit payment arrangement shall apply to each claimant.

H. Whenever this plan applies, it will supersede any inconsistent provision of the Interstate Benefit Payment Plan and the regulation thereunder.

FORMS

Initial Interstate Claim, IB-1 (rev. 11/88).

Continued Interstate Claim, IB-2 (rev. 6/89).

Claimant/Employer Separation Statement, IB-3 (rev. 6/88).

Request for Transfer of Wages Interstate Arrangement Statement for Combining Employment and Wages, IB-4 (rev. 6/88).

INTERSTATE AND MULTI-STATE CLAIMS

Instructions for Self-Filing Interstate Claims, IB-ISF (rev. 5/90).

Interstate Internet Information Sheet, IB-7 (rev. 6/89).

Interstate Eligibility Review, IB-10 (rev. 6/88).

Interstate Report of Job Search Verification, IB-10B (eff. 8/82).

Interstate Tracer, IB-12 (rev. 10/79).

Interstate Memorandum, IB-13 (rev. 1/60).

Interstate Request for Reconsideration of Monetary Determination/Wage Credits, IB-14
(rev. 6/89).

Request for Claim Status Information, IB-15 (rev. 4/81).

Interstate Change of Address, IB-16 (rev. 8/83).

Speed Message, IB-20 (rev. 5/76).

Important Information for Interstate Claimants.

Important Notice to Combined-Wage Claimants, VEC-CW-30 (rev. 5/85).

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16 VAC 5-80-10. Deputy's determinations.

A. Whenever, after a claim is filed, a deputy obtains information from a claimant, employer, or third party which could affect the claimant's entitlement to benefits, he shall initiate further investigation. The deputy may contact the parties in person or by telephone to obtain information. Documentary evidence prepared specifically for the claim or for other purposes may be considered by the deputy. Any party to an investigation may be represented by counsel or a duly authorized representative. No information or evidence shall be considered by the deputy unless the claimant has been given the opportunity to see or hear it and comment upon it. Information concerning eligibility or qualification for benefits shall be entered into commission records.

B. A predetermination fact-finding proceeding may be scheduled by the deputy whenever a request is made by the claimant, his ~~last 30-day employing unit~~ liable employer, or his interested subsequent employing unit, for the purpose of gathering information to determine benefit eligibility or qualification. Notice of the date, time and location will be mailed to the parties five days before the scheduled proceeding, but such notice may be waived with the parties' consent.

The proceeding may be conducted telephonically or in person with the deputy presiding. This informal interview shall not be recorded in any way, although notes can be taken by the deputy. Statements made by parties or witnesses shall not be taken under oath and

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formal examination or cross-examination shall not be permitted. The deputy shall direct questions to the parties and witnesses. The parties may also ask questions of each other and the witnesses. Rebuttal to statements made by opposing parties or witnesses shall be permitted. Any party to a predetermination proceeding may be represented by counsel or other duly authorized agent. The record of facts of the proceeding shall become a part of the commission's records.

C. As soon as possible following the acquisition of facts necessary to make a determination, either from the parties' submissions or from a predetermination proceeding, the deputy shall render a determination in writing which shall include the effective date of any qualification or disqualification, the dates of any eligibility or ineligibility, the law or regulation upon which the determination is based, and the reasons for the determination, together with information concerning the filing of an appeal. This determination shall be promptly mailed to the parties at their last known addresses.

16 VAC 5-80-20. First level appeals.

A. The claimant, his ~~last 30-day employing unit~~ liable employer, or any subsequent employing unit with a direct interest in an issue may appeal from an adverse deputy's determination as specified in § 60.2-619 of the Code of Virginia.

1. Appeals shall be filed with the ~~commission through the local unemployment insurance office where the claim was filed,~~ or at the administrative office of the

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~~commission in Richmond, Virginia~~ commission's Administrative Law Division in
one of the following ways:

a. In person at any agency service location, including field offices, regional
adjudication centers, one-stop centers, or the commission's administrative office
in Richmond, Virginia;

b. By mail to the Administrative Law Division at the address specified on the
deputy's determination;

c. By facsimile transmission to the Administrative Law Division at the facsimile
number specified on the deputy's determination;

d. By the Internet to the electronic mail address specified by the commission.

2. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the United States Postal Service. If no postmark appears on the envelope, the appeal shall be presumed to be filed on the date it was received by the commission.

3. Appeals shall be in writing and should set forth the grounds upon which they are sought, as well as the social security account number of the claimant; however, any document in writing submitted by a party or his authorized representative expressing a

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desire to appeal shall be sufficient to initiate an appeal. Agency personnel shall furnish an appellant or his authorized representative whatever assistance is necessary to file an appeal. The appeal should be signed by the appealing party or that party's authorized representative; however, the absence of a signature shall not result in the dismissal of the appeal.

B. After the filing of an appeal, the record in connection with the claim, together with the notice of appeal, shall be assigned to an appeal tribunal consisting of a salaried examiner only. Should evidence indicate that the appeal was not filed within the time prescribed by law, the first issue to be considered at the hearing shall be whether the appeal was timely filed or whether there exists good cause for extending the appeal period.

1. ~~In all cases except those coming under the provisions of subdivisions 2 and 3 of this subsection, an in-person hearing shall be scheduled in the local unemployment insurance office where the claim was filed or subsequently transferred. At the discretion of the commission, an in-person hearing may be scheduled at some other convenient location, provided that the alternate location is not such a distance from the claimant's residence as to cause undue hardship or unreasonable travelling expense.~~ Except as otherwise provided herein, all hearings shall be conducted by telephone conference call. At the discretion of the commission, a split hearing or an in-person hearing may be scheduled if the complexity of the case or the quality of telephone service in a particular locality makes participation in the hearing unreasonably difficult. A split or in-person hearing

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will be scheduled if a party does not have reasonable access to a telephone that would permit meaningful participation in a telephonic hearing. In assessing the complexity of a particular case, the commission shall consider the number of witnesses involved, the number and length of any documents that will likely be proposed as exhibits, whether one or both parties are represented, whether an interpreter is required, and any other relevant factors. In-person or split hearings shall be scheduled for the regional adjudication center that is most convenient for the party who will be appearing in person. At the discretion of the commission, an in-person or split hearing may also be scheduled at any other convenient location, provided that the alternate location does not cause undue hardship or unreasonable traveling expenses to the party participating in person.

~~2. In cases where the claimant has filed an interstate claim, or upon the consent of all parties, a telephone hearing shall be scheduled. An interstate claimant, upon request, shall be allowed to personally appear for participation in an in-person or split hearing. In such case, the claimant will be scheduled to appear at the local unemployment insurance office of the commission located nearest his residence, or any other convenient location~~

~~3. A split hearing may be scheduled upon the request of any party, or at the discretion of the commission, when:~~

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~~a. The claimant has worked for an employer in another state, and thereafter returns to Virginia and files an intrastate claim naming the out-of-state employer as an interested party; or~~

~~b. A bona fide emergency or other compelling circumstance makes attendance at an in-person hearing by a party, material witness, or representative unreasonably difficult.~~

~~4. After an in-person hearing has been scheduled and the notice of hearing mailed, either the Chief Appeals Examiner or the appeals examiner assigned to the case may grant a request for a split hearing for any of the reasons set forth in subdivision 3 of this subsection. In such case, a new notice of hearing need not be issued, but all interested parties and their representatives should be informed of the agency's action and the telephonic procedures as soon as practicable.~~

5. Any party who desires to appear in person for the hearing shall be permitted to do so provided a timely request is received by the commission. A request shall be deemed timely if it is received by the commission before the scheduled hearing convenes. If a request to appear in person is received after the hearing has been convened, the presiding appeals examiner may grant or deny the request based upon consideration of all relevant circumstances. A request by a party to appear in person shall not require any other party to also appear in person; however, any other parties to the proceeding should be promptly

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informed of the request for in-person participation and be given the opportunity to participate in person..

3. A hearing that is postponed or continued to accommodate a request for in-person participation shall be rescheduled as soon as administratively feasible.

4. A notice of hearing shall be mailed to all parties and their known authorized representatives at least 10 days in advance of the hearing. The hearing notice of hearing shall set forth the particular statutory provisions and ~~points at issue~~ regulations which must be considered to resolve the case. The appeals examiner may consider any other applicable issues which are raised or become evident during the course of the hearing provided that all parties in interest are present and all agree on the record to waive the ~~statutory~~ 10 day notice requirement with respect to such new issue. The appeals examiner may refer a new issue ~~back to the Deputy~~ deputy if it has not been ruled upon at that level and may, upon his own motion, postpone or continue the case if a new issue has become evident and it is necessary to give proper ~~statutory~~ written notice in order to proceed.

C. The Office of First Level Appeals "First Level Appeals" shall endeavor to schedule hearings as soon as possible in the order in which appeals are received. Special requests regarding dates or times of hearings will be given consideration; however, they need not always be honored. Requests for postponement of scheduled hearings shall be granted only when a party or his authorized representative demonstrates good cause for an

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inability to appear at the scheduled date and time. Good cause shall be deemed to exist if a likelihood of material and substantial harm is shown. Postponements may be granted only by the Chief Appeals Examiner, the Clerk of the ~~Commission Lower Authority~~ Commission's First Level Appeals, the examiner assigned to hear the case, or an appeals examiner acting in charge of the Office of First Level Appeals, although they may be communicated to the parties by other authorized persons. A postponed hearing may be rescheduled without notice if all parties in interest agree. Otherwise, notice of a postponed hearing shall be given as if it were a new hearing.

D. Once a hearing has commenced, it may be continued only by the presiding appeals examiner, either upon his own motion or that of a party. Continuances may be granted in situations where: (i) there is insufficient time to properly hear the evidence; or (ii) unexpected or unavoidable circumstances arise during the course of a hearing which require a continuance in order to protect the substantive or procedural rights of the parties.

A continued hearing may be rescheduled by the presiding appeals examiner without written notice if all parties in interest are present and all concur. Otherwise, notice of a continued hearing shall be given as if it were a new hearing.

E. If the appellant wishes to withdraw his appeal, a request, together with the reasons therefor, must be made in writing and sent to the Clerk of the ~~Commission Lower~~

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~~Authority~~ Commission's First Level Appeals at the commission's administrative office in Richmond, Virginia. The request will be granted only if the appeals examiner assigned to hear the case is satisfied that:

1. The appellant understands the effect that withdrawal will have upon benefit entitlement, potential benefit charges, and potential overpayment;
2. The request is not the result of any coercion, collusion, or illegal waiver of benefits prohibited under §_60.2-107 of the Code of Virginia; and
3. The appealed determination is not clearly erroneous based upon the existing record.

Once granted, a withdrawal cannot be rescinded unless an evidentiary hearing on the issue of rescission is held before an appeals examiner and the former appellant demonstrates that the criteria required for withdrawal were not fully met. A request to rescind a withdrawal must be filed with the commission within 30 days from the issuance of the Order of Dismissal or the discovery of information that would establish that withdrawal criteria were not met.

F. In any hearing before an appeals examiner, all testimony shall be taken under oath or affirmation and a record of the proceedings shall be made by the presiding appeals examiner who shall inform all parties of this fact. No other recording of the proceedings other than that specifically authorized by the Act shall be permitted.

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The appeals examiner shall conduct the hearing in such a manner as to ascertain the substantive rights of the parties without having to be bound by common law, statutory rules of evidence, or technical rules of procedure. In addition to testimony, the appeals examiner may accept relevant documents or other evidence into the record as exhibits, upon the motion of a party.

1. Where a party is unrepresented, the appeals examiner shall assist that party in presenting his case and testing the case of the opposing party.
2. At any hearing before an appeals examiner, an interested party may appear in person, by counsel, or by an authorized representative. All such persons will be permitted to attend the entire hearing.
3. An employer shall be permitted one representative, in addition to counsel or duly authorized agent, who may attend the entire proceeding. The appeals examiner shall exclude any other witnesses from the hearing until such time as their testimony is to be taken. Observers may be permitted to attend the hearing so long as there is no objection by a party.
4. The appeals examiner shall control the order of proof, rule upon the admission of evidence, and may examine and cross-examine witnesses. The examiner shall have the authority to maintain order and eject disruptive or unruly individuals. At a hearing, the parties, counsel, or duly authorized representatives shall be given an opportunity to cross-

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examine witnesses, to inspect documents, and to offer evidence in explanation and rebuttal. On motion of the appeals examiner ~~alone, or any party,~~ documents already in a claimant's file or obtained during the course of a hearing may be admitted into the record as exhibits provided they are relevant to the issues in dispute. Before the hearing is closed, the parties shall be given an opportunity to present oral argument on all the issues of law and fact to be decided. In addition, the appeals examiner may permit the parties to submit written arguments.

G. The decision of the appeals examiner shall be reduced to writing and shall state the issues, findings of fact, opinion or reasons for the decision, and final judgment of the examiner. A copy of the decision shall be mailed to each of the interested parties and their known representatives who have requested to be notified of the decision. If the decision is rendered by an appeals examiner other than the one who presided at the hearing, that examiner shall review the record of the hearing and so state in the decision.

H. If any party believes that the appeals examiner exhibits bias towards one or more parties in a case, a challenge to the interest of such appeals examiner shall be made promptly after the discovery of facts on which such challenge is based, but not later than the date on which the decision is issued. ~~Unless made at the hearing, such challenge shall be set forth in writing with the reasons therefor, and sent to the Chief Appeals Examiner at the administrative office of the commission in Richmond, Virginia. If the Chief Appeals Examiner does not disqualify the challenged appeals examiner, the appeals~~

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~~examiner shall continue to participate in the hearing and render a decision in the case. A~~
challenge to the interest of the appeals examiner made during the course of the hearing
shall be decided and ruled upon by the presiding appeals examiner. If the presiding
appeals examiner grants the challenge and withdraws from the case, the appeals examiner
shall adjourn the hearing and promptly return the case to the Clerk of the Commission for
rescheduling before a different appeals examiner. If a party challenges the interest of an
appeals examiner after the conclusion of the hearing, but before the decision is issued, the
challenge shall be set forth in writing with the reasons therefor, and sent to the chief
appeals examiner at the Administrative Office of the Commission in Richmond, Virginia.
If the Chief Appeals Examiner or his designee does not remove the challenged appeals
examiner, the appeals examiner shall render a decision in the case. If the challenged
appeals examiner is ~~disqualified~~ removed, or chooses to withdraw, the Chief Appeals
Examiner, or ~~another appeals examiner appointed by him~~ his designee, shall decide the
case. Failure to ~~disqualify~~ remove the appeals examiner shall be subject to review by the
commission on appeal by the aggrieved party, in the same manner as any other issue in
the case.

I. Any party who is unable to appear for the scheduled hearing, or who appeared but wishes to present additional evidence, may request a reopening of the case, which will be granted if good cause is shown. The request, together with the reasons therefor, shall be

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made in writing and sent to the Chief Appeals Examiner in the administrative office of the commission in Richmond, Virginia.

1. Where a request for reopening is received before the decision of the appeals examiner is issued, the decision shall be withheld if the Chief Appeals Examiner, or the appeals examiner assigned to the case, finds that the reasons given in the request, if proven, would establish good cause to reopen the hearing. In that event, a hearing will be scheduled on the reopening issue. If, after the hearing, the appeals examiner should decide that reopening is warranted, the case shall be reopened for the taking of additional evidence. If no reasons are given for the reopening request, or if the reasons given would not establish good cause to reopen the hearing, the appeals examiner shall render a decision denying the request and adjudicating the merits of the case. In any event, the decision concerning the issue of reopening shall be subject to review by the commission on appeal by the aggrieved party.

2. A request for reopening after the appeals examiner has issued his decision on the merits of the case, but within the appeal period, shall be mailed to the Office of Commission Appeals and shall set forth in writing the reasons therefor. If the commission is of the opinion that the written request establishes good cause for reopening it shall remand the case to the Chief Appeals Examiner. If the commission is of the opinion that the written request does not set forth good cause for reopening it shall treat the request as an appeal to the commission on the merits of the case pursuant to this part. The

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commission may, in its discretion, schedule a hearing to receive evidence with respect to a reopening request or remand the case to the appeals examiner to hear and decide the reopening issue.

3. Once a decision is rendered and becomes final, it cannot be reopened for any reason. A request for a reopening after the decision of the appeals examiner has become final shall be treated as an untimely appeal to the commission pursuant to this chapter. In the discretion of the commission, a hearing on the issue of reopening may be held.

16 VAC 5-80-30. Commission review.

A. ~~The commission may acquire jurisdiction over a case in any of the following ways:~~

The claimant, his liable employer, or any subsequent employing unit with a direct interest in an issue may appeal from an adverse appeals examiner's decision as provided in § 60.2-620 of the Code of Virginia.

1. ~~Any party to a hearing before an appeals examiner may appeal the decision within the time limit set forth in §60.2-620 of the Code of Virginia. The party appealing shall file with the commission, through the local unemployment insurance office where the claim was filed or at the administrative office of the commission in Richmond, Virginia, a notice of appeal which shall be in writing and should set forth the grounds upon which the appeal is sought. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to~~

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~~be filed on the date of postmark by the United States Postal Service.~~ Appeals should be filed with the Commission's Administrative Law Division in one of the following ways:

- a. In person at any agency service location, including field offices, regional adjudication centers, one-stop centers, or the Commission's administrative office in Richmond, Virginia;
- b. By mail to the Administrative Law Division at the address specified on the appeals examiner's decision;
- c. By facsimile transmission to the Administrative Law Division at the facsimile number specified on the appeals examiner's determination;
- d. By the Internet to the electronic mail address specified by the commission.

2. At any time before the decision of the appeals examiner becomes final, the commission may on its own motion assume jurisdiction of any case pending before an appeals examiner and place such case on the appeal docket of the commission. The commission may consider and review the case and affirm, modify, or set aside and vacate the decision of the appeals examiner on the basis of the evidence previously submitted as shown by the record, or may direct the taking of additional evidence before the commission or the appeals examiner. Such additional evidence may not be taken unless notice of the time

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and place of the taking thereof has been mailed to all parties to the case at least ~~seven~~ ten days before such time.

3. If the appeal to the commission is not filed within the statutory time limit set forth in § 60.2-620 of the Code of Virginia, the appellant shall set forth in writing the reasons for the late filing. If the reasons set forth, if proven, would show good cause for extending the appeal period, the commission shall schedule a hearing to take testimony on the issue of good cause for late filing. If the reasons set forth in the notice of appeal are insufficient to show good cause for late filing, or if no reasons are provided, the appeal shall be dismissed and the decision of the appeals examiner shall become the final decision of the commission.

B. Except as otherwise provided by this chapter, all appeals to the commission shall be decided on the basis of a review of the evidence in the record. The commission, in its discretion, may direct the taking of additional evidence after giving written notice of such hearing to the parties, provided:

1. It is shown that the additional evidence is material and not merely cumulative, corroborative or collateral, could not have been presented at the prior hearing through the exercise of due diligence, and is likely to produce a different result at a new hearing; or

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2. The record of the proceedings before the appeals examiner is insufficient to enable the commission to make proper, accurate, or complete findings of fact and conclusions of law.

A party wishing to present additional evidence or oral argument before the commission must file a written request within 14 days from the date of delivery or mailing of the Notice of Appeal. A request for a hearing shall be deemed to be filed on the date of receipt by the commission. A request for a hearing mailed to the Office of Commission Appeals shall be deemed to be filed on the date of postmark by the United States Postal Service. In such cases, the postmark date shall be conclusive as to the date of filing. The commission shall notify the parties of the time and place where additional evidence will be taken or oral argument will be heard. Such notice shall be mailed to the parties and their last known representatives at least ~~seven~~ ten days in advance of the scheduled hearing. A request to present additional evidence will be granted only if the aforementioned guidelines are met. A timely request for oral argument will be granted unless, after a review of the record of the case, the commission determines that the record is either defective or insufficient, under which circumstances the case may be remanded to the appeals examiner for further proceedings.

3. Except as otherwise provided herein, commission level hearings shall be conducted in person at the administrative office for the agency's Administrative Law Division in Richmond, Virginia. Upon the consent of all interested parties, the commission may

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permit oral argument hearings to be conducted by telephone conference call. All parties shall have the right to submit a written argument in lieu of participating in an oral argument hearing. The commission may prescribe reasonable conditions for the submission of written arguments.

4. Notwithstanding any other provision of this regulation, the commission shall have the authority to schedule a hearing on its own motion whenever it believes doing so would serve the ends of justice.

C. Postponements, continuances and withdrawals of appeals before the commission shall be handled in the same manner as ~~lower authority~~ First Level Appeals, as set forth in this chapter, except that requests shall be made through the Office of Commission Appeals or through the special examiner assigned to hear the case. Only a special examiner shall have the authority to grant a postponement.

~~D. Prior to a hearing before the commission for the purpose of taking additional evidence or for oral argument, and upon the request of an interested party, a transcript of the hearing held before the appeals examiner shall be furnished to all interested parties.~~

~~Where no request for a transcript is made and the hearing lasted less than 45 minutes, the tape may be replayed for the parties prior to the commission hearing in lieu of furnishing a transcript.~~ A transcript of the appeals examiner's hearing shall be provided to the parties whenever there has been a timely request for a hearing before the commission;

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provided, however, that no transcript need be provided if the purpose of the commission hearing is limited to receiving evidence to determine (1) whether the appeal was timely filed, and if not, whether good cause exists to extend the statutory appeal period; or (2) whether good cause exists to reopen the appeals examiner's hearing. A hearing before the commission for additional evidence shall be conducted under the same rules as outlined in subsection F of 16 VAC 5-80-20 for the conduct of ~~hearings at the lower authority level~~ First Level Appeals hearings, except that the party being granted the right to present additional evidence shall proceed first. If both parties are allowed to present additional evidence, the appellant shall proceed first. Oral argument shall commence with the appellant, allowing the appellee the chance to respond with oral argument and rebuttal, and close with the appellant in rebuttal.

E. The decision of the commission affirming, modifying, or setting aside any decision of an appeals examiner shall be in writing and shall be delivered or mailed to each party to the appeal as well as to their known representatives who have requested to be notified of the decision. The date of such notification shall be recorded on the commission's appeal docket.

F. Any party to an appeal before the commission who was unable to appear for the scheduled hearing may request a reopening of the matter. The request shall be in writing to the Office of Commission Appeals and shall set forth the basis upon which it is being made. If the commission is of the opinion that the reasons in the request show good cause

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to reopen, the request for reopening shall be granted. If the commission is of the opinion that the reasons given in the request do not show good cause, reopening shall be denied.

In the discretion of the commission, a hearing on the issue of reopening may be held.

Once a decision is rendered and has become final, the case may not thereafter be reopened for any reason.

G. If any party believes that the presiding special examiner exhibits bias, prejudice, a lack of impartiality, or has an interest in the outcome of the proceeding, a challenge to the special examiner's interest shall be promptly made after the discovery of the facts on which such challenge is based. A challenge to the interest of the Commission special examiner may be made orally during a hearing or in writing before or after a hearing, but only prior to the date the Commission's commission's decision becomes final. If made before or at the hearing, all parties present shall be afforded an opportunity to address the merits of the challenge. The ruling may be made orally at the hearing or in writing after the hearing has been concluded. If the special examiner rules orally and denies the challenge, that ruling shall also be reduced to writing and included in the commission's final decision. If the special examiner grants the challenge, then the case shall be referred to the chief administrative law judge, or his designee, for reassignment. A challenge to the interest of the special examiner that is made after the hearing has been conducted shall be referred to the presiding special examiner for review and resolution; provided, however, that if the special examiner has already ruled on the challenge during the

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hearing or in a decision, the matter shall be referred to the chief administrative law judge for resolution. The commission may schedule a hearing to take evidence with respect to any challenge, or request the parties to submit affidavits, memoranda or briefs with respect to the challenge.

A written challenge made before or after the hearing has been conducted shall be submitted to the Chief Administrative Law Judge, Administrative Law Division, Office of Commission Appeals at the Commission's administrative office in Richmond, Virginia. A party's disagreement with a procedural or evidentiary ruling is not a basis, standing alone, for challenging the interest of a special examiner.

16 VAC 5-80-40. Oaths, ~~and~~ subpoenas, ex parte communications, and approval of attorney's fees.

A. The special examiner, the appeals examiner, and the Clerk of the Commission shall have the power to administer oaths, to take depositions, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records, and to take such action as may be necessary in any hearing.

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B. Upon the request of any party to a proceeding, the Clerk of the Commission, in the name of the commission, may issue subpoenas requiring the attendance of witnesses at any designated time and place fixed by the special examiner or appeals examiner for the hearing of a claim or any issue therein.

Upon a written request of any party specifying with reasonable certainty any books, papers, correspondence, memoranda, or other desired records, the Clerk of the Commission may issue a subpoena duces tecum requiring the production of such evidence at any designated time and place fixed by the special examiner or appeals examiner for the hearing of a claim or any issue therein.

A request for a subpoena ad testificandum or subpoena duces tecum may be denied if there is no showing of relevance to the subject of the appeal, if it appears that the request would only produce cumulative evidence or testimony, or if it appears that the request would not serve the interest of the party making it. If such request is denied, it may be renewed at the hearing and a proffer of evidence or testimony may be made. The appeals examiner or special examiner hearing the case shall continue the hearing if it appears that the subpoena should be issued.

C. Witnesses subpoenaed for appeals before the appeals examiner or the commission, or both, shall, upon request, be allowed expenses as provided in §14.1-190 of the Code of Virginia.

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D. No party or authorized representative of a party shall confer, engage in *ex parte* communications or otherwise communicate in any manner with the presiding appeals examiner or special examiner regarding substantive, procedural, or other matters which could be reasonably expected to influence the outcome of the case or case decision without first giving adequate notice to all other parties, and affording such other parties full opportunity to participate, or otherwise to make appropriate response to the substance of the communication. For the purpose of this subsection, the term “parties” shall include claimants, and any employers or employing units that have a direct interest in the outcome of the pending case. Notice of an *ex parte* communication give to a party’s attorney of record or duly authorized representative shall constitute notice to the party.

This provision shall not apply to deputies who conduct predetermination fact-finding predetermination fact-finding proceedings on benefit eligibility issues, and field tax representatives who conduct audits and investigations regarding tax liability issues.

E. Approval of fees for representation of claimants

1. Pursuant to § 60.2-123 of the Code of Virginia, no attorney or other individual representing a claimant before an officer of the commission may charge or receive a fee unless approved by the commission.

2. All fee requests shall be submitted to the Chief Administrative Law Judge or his designee. An attorney or other representative for a claimant shall, upon request, provide

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the commission with such information as it deems necessary to assess the reasonableness of the request submitted for approval. Such information may include, but shall not be limited to, written fee agreements, invoices, and detailed summaries of services provided.

3. In assessing the reasonableness of an attorney's request for approval of a fee, the commission shall consider the Virginia Rules of Professional Conduct adopted by the Virginia Supreme Court, Part 6, II.

When applicable, these factors shall also be considered in approving a fee request from non-lawyer representatives. Notwithstanding these factors, no fee shall be approved that exceeds 25% of the claimant's maximum benefit amount.

4. No fee shall be approved until the agency determination or decision is issued pursuant to § 60.2-619, 620, or 622 has become final, provided, however that in those cases where an attorney or representative is representing a claimant through multiple stages of the administrative adjudication and appeal process, the commission may approve an interim fee award not to exceed the lesser of \$400 or 10% of the claimant's maximum benefit amount.

FORMS

Notice of Appeal Hearing, VEC-AE-1 (rev. 6/91).

Notice of Telephonic Hearing, VEC-AE-1A (rev. 5/92).

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Notice of Appeal, VEC-AE-2 (rev. 6/91).

Request for Withdrawal of Appeal, VEC-AE-10 (rev. 6/1/66).

Notice of Claims Filed During Labor Dispute, VEC-AE-15 (rev. 7/1/70).

Notice of Commission Hearing for Oral Argument, VEC-C-1 (rev. 6/90).

Notice of Commission Hearing for Additional Evidence, VEC-C-1A (rev. 6/90).

Employer Notice of Pre-Determination Proceeding, B-10EX.

Claimant Notice of Fact Finding Interview, B-10EXP.

Fact Finding Report, IB-11 (rev. 2/72).

Separation-Fact Finding Report, IB-11S (rev. 10/79).

Claimant Notice of Predetermination Proceeding, VEC-B-10D (rev. 2/72).

Employer Notice of Predetermination Proceeding, VEC-B-10E (rev. 4/82).

Claimant's Statement Concerning Voluntary Quit, VEC-B-60.1 (rev. 11/94).

Claimant's Statement Concerning Discharge, VEC-B-60.2 (rev. 11/94).

Claimant's Statement Concerning Able and Available, VEC-B-60.5 (rev. 11/94).

Claimant's Statement Concerning Refusal of Job or Referral, VEC-B-60.6 (rev. 11/94).

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Claimant's Request for Training Approval, VEC-B-60.7 (rev. 11/94).

Claimant's Statement Concerning Voluntary Quit Illness, VEC-B-60.8 (rev. 11/94).

Supplemental Sheet - Claimant and Employer Statement, VEC-B-60SUP (eff. 11/94).

Notice of Deputy's Determination, VEC-BPC-54 (eff. 6/90).