

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 129 Session of 2021

INTRODUCED BY COX, GLEIM, JOZWIAK, MILLARD, MIZGORSKI, MOUL, RYAN, STRUZZI, THOMAS, ZIMMERMAN AND WHEELAND, FEBRUARY 11, 2021

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 20, 2021

AN ACT

1 Amending the act of December 5, 1936 (2nd Sp.Sess., 1937
2 P.L.2897, No.1), entitled "An act establishing a system of
3 unemployment compensation to be administered by the
4 Department of Labor and Industry and its existing and newly
5 created agencies with personnel (with certain exceptions)
6 selected on a civil service basis; requiring employers to
7 keep records and make reports, and certain employers to pay
8 contributions based on payrolls to provide moneys for the
9 payment of compensation to certain unemployed persons;
10 providing procedure and administrative details for the
11 determination, payment and collection of such contributions
12 and the payment of such compensation; providing for
13 cooperation with the Federal Government and its agencies;
14 creating certain special funds in the custody of the State
15 Treasurer; and prescribing penalties," in determination of
16 compensation, appeals, reviews and procedure, further
17 providing for rules of procedure AND FOR PLACE OF HEARING. <--

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 ~~Section 1. Section 505 of the act of December 5, 1936 (2nd <--~~
21 ~~Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment~~
22 ~~Compensation Law, is amended to read:~~

23 SECTION 1. SECTIONS 505 AND 505.1 OF THE ACT OF DECEMBER 5, <--
24 1936 (2ND SP.SESS., 1937 P.L.2897, NO.1), KNOWN AS THE

1 UNEMPLOYMENT COMPENSATION LAW, ARE AMENDED TO READ:

2 Section 505. Rules of Procedure.--(a) The manner in which
3 appeals shall be taken, the reports thereon required from the
4 department, the claimant and employers, and the conduct of
5 hearings and appeals, shall be in accordance with rules of
6 procedure prescribed by the board whether or not such rules
7 conform to common law or statutory rules of evidence and other
8 technical rules of procedure. [Rules established by the board
9 shall permit either party to a hearing to testify via telephone,
10 without regard to distance of hearing location from either
11 party.] The following shall apply:

12 (1) THE BOARD SHALL REVIEW AND REVISE ITS RULES TO MODERNIZE <--
13 THE METHODS BY WHICH HEARINGS ARE CONDUCTED. REVISED RULES
14 SHALL:

15 (I) PROVIDE FOR A TRANSITION FROM IN-PERSON AND TELEPHONE
16 HEARINGS TO HEARINGS CONDUCTED PRIMARILY VIA VIDEOCONFERENCE NO
17 LATER THAN THE EFFECTIVE DATE OF THE REGULATIONS PROMULGATED IN
18 ACCORDANCE WITH PARAGRAPH (2) (V).

19 (II) ALLOW PARTIES AND WITNESSES TO PARTICIPATE BY TELEPHONE
20 OR OTHER ELECTRONIC MEANS WHEN VIDEOCONFERENCING IS NOT
21 AVAILABLE.

22 (III) PROVIDE FOR THE CONTENTS OF THE HEARING NOTICE,
23 INCLUDING INFORMATION ON HOW TO ACCESS THE HEARING AND HOW TO
24 REQUEST AN IN-PERSON HEARING FOR GOOD CAUSE.

25 (IV) PROVIDE FOR THE PROCEDURES FOR PARTIES TO SUBMIT
26 EVIDENCE AND FOR THE DISTRIBUTION OF EVIDENCE DURING HEARING
27 PREPARATION, INCLUDING METHODS TO ELECTRONICALLY SUBMIT AND
28 DISTRIBUTE EVIDENCE.

29 (V) REQUIRE PARTIES AND WITNESSES TO ACCESS A HEARING
30 ACCORDING TO INSTRUCTIONS PROVIDED BY THE BOARD OR A REFEREE,

1 WITHOUT THE NEED FOR THE BOARD OR REFEREE TO INITIATE CONTACT.

2 (VI) PROVIDE FOR IDENTITY CONFIRMATION FOR PARTIES AND
3 WITNESSES, INCLUDING THE SWORN AFFIRMATION OF IDENTITY, SUBJECT
4 TO 18 PA.C.S. § 4903 (RELATING TO FALSE SWEARING), FOR
5 INDIVIDUALS PARTICIPATING BY VIDEOCONFERENCE, TELEPHONE OR OTHER
6 ELECTRONIC MEANS.

7 (VII) ALLOW NOTICES OF HEARINGS TO BE PROVIDED
8 ELECTRONICALLY TO PARTIES AND COMMUNICATIONS RELATED TO THE
9 SCHEDULING OF AND ACCESS TO HEARINGS TO BE MADE BY TELEPHONE,
10 EMAIL OR OTHER ELECTRONIC MEANS, IF THE PARTY HAS AGREED TO
11 RECEIVE NOTICES AND OTHER COMMUNICATIONS BY THESE MEANS, AND
12 REQUIRE NOTICES OF DECISIONS AND OTHER DOCUMENTS THAT ARE
13 REQUIRED TO BE SENT BY MAIL TO ALSO BE SENT BY EMAIL OR OTHER
14 ELECTRONIC MEANS WHENEVER POSSIBLE.

15 (VIII) ALLOW A PARTY OR WITNESS IN AN IN-PERSON HEARING TO
16 PARTICIPATE IN THE HEARING BY VIDEOCONFERENCE, TELEPHONE OR
17 OTHER ELECTRONIC MEANS, UNLESS GOOD CAUSE UNDER PARAGRAPH (4)
18 NECESSITATES THAT THE PARTY OR WITNESS APPEAR IN-PERSON.

19 (2) THE BOARD SHALL IMPLEMENT REVISED RULES AS FOLLOWS:

20 (I) THE BOARD SHALL SOLICIT PUBLIC COMMENTS ON THE CREATION
21 OF TEMPORARY RULES FOR HEARINGS. THE PUBLIC COMMENT PERIOD SHALL
22 BE AT LEAST FIFTEEN DAYS AND NOT MORE THAN THIRTY DAYS. WITHIN
23 THIRTY DAYS OF THE EFFECTIVE DATE OF THIS PARAGRAPH, THE BOARD
24 SHALL SUBMIT NOTICE OF THE PUBLIC COMMENT PERIOD TO THE
25 LEGISLATIVE REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA
26 BULLETIN.

27 (II) WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS
28 PARAGRAPH, THE BOARD SHALL SUBMIT NOTICE OF TEMPORARY RULES,
29 CREATED IN ACCORDANCE WITH PARAGRAPH (1) TO THE LEGISLATIVE
30 REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA BULLETIN.

1 (III) TEMPORARY RULES SHALL TAKE EFFECT NO LATER THAN THIRTY
2 DAYS AFTER THE PUBLICATION OF NOTICE UNDER SUBPARAGRAPH (II).

3 (IV) THE BOARD SHALL PROPOSE REGULATIONS TO REVISE RULES
4 UNDER PARAGRAPH (1) NO LATER THAN ONE YEAR AFTER THE EFFECTIVE
5 DATE OF THIS PARAGRAPH.

6 (V) THE BOARD SHALL PROMULGATE REGULATIONS TO REVISE RULES
7 UNDER PARAGRAPH (1) NO LATER THAN THREE YEARS AFTER THE
8 EFFECTIVE DATE OF THIS PARAGRAPH.

9 (VI) TEMPORARY RULES SHALL REMAIN IN EFFECT UNTIL THE
10 EFFECTIVE DATE OF REGULATIONS PROMULGATED UNDER SUBPARAGRAPH
11 (V).

12 ~~(1)~~ (3) Hearings shall be conducted via telephone, <--
13 VIDEOCONFERENCE OR OTHER ELECTRONIC MEANS unless the referee
14 determines that good cause exists to hold an in-person hearing.

15 ~~(2)~~ (4) A party may request an in-person hearing in writing <--
16 to the department within ten days of the date of the hearing
17 notice FOR GOOD CAUSE. The hearing notice shall include notice <--
18 of the procedure to request an in-person hearing.

19 ~~(3)~~ (5) For the purposes of this subsection, good cause <--
20 shall include any of the following circumstances:

21 (i) A party to the hearing, ~~OR a witness or other~~ <--
22 participant has a physical, mental or intellectual disability,
23 which would impose an undue hardship on the individual if the
24 hearing is conducted via telephone, VIDEOCONFERENCE OR OTHER <--
25 ELECTRONIC MEANS.

26 (ii) A party to the hearing, ~~OR a witness or other~~ <--
27 participant requires an interpreter, and the department cannot
28 reasonably provide interpretation services via telephone, <--
29 VIDEOCONFERENCE OR OTHER ELECTRONIC MEANS.

30 (iii) A party to the hearing offers compelling evidence that

1 conducting the hearing via telephone, VIDEOCONFERENCE OR OTHER <--
2 ELECTRONIC MEANS would create a significant advantage for an
3 opposing party.

4 (IV) A PARTY TO THE HEARING AFFIRMS, SUBJECT TO 18 PA.C.S. § <--
5 4904 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES), THAT
6 THE PARTY IS UNABLE TO PARTICIPATE IN THE HEARING VIA TELEPHONE,
7 VIDEOCONFERENCE OR OTHER ELECTRONIC MEANS.

8 (6) THE DEPARTMENT SHALL, WHEREVER POSSIBLE, MAKE ATTEMPTS
9 TO ASSIST THE BOARD IN FACILITATING ACCESS TO HEARINGS HELD VIA
10 TELEPHONE, VIDEOCONFERENCE OR OTHER ELECTRONIC MEANS FOR PARTIES
11 AND WITNESSES WHO REQUEST ASSISTANCE IN GAINING ACCESS TO THE
12 TECHNOLOGY NECESSARY TO PARTICIPATE IN A HEARING.

13 (7) THE FOLLOWING SHALL APPLY:

14 (I) ANY PROVISION OF 34 PA. CODE CH. 101 (RELATING TO
15 GENERAL REQUIREMENTS) THAT IS INCONSISTENT WITH THIS SUBSECTION,
16 OR WITH TEMPORARY RULES OR REGULATIONS PROMULGATED UNDER
17 PARAGRAPH (2), IS ABROGATED.

18 (II) TEMPORARY RULES FOR HEARINGS ISSUED UNDER PARAGRAPH (2)
19 SHALL NOT BE SUBJECT TO ANY OF THE FOLLOWING:

20 (A) SECTION 612 OF THE ACT OF APRIL 9, 1929 (P.L.177,
21 NO.175), KNOWN AS "THE ADMINISTRATIVE CODE OF 1929."

22 (B) SECTIONS 201, 202, 203, 204 AND 205 OF THE ACT OF JULY
23 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE "COMMONWEALTH
24 DOCUMENTS LAW."

25 (C) SECTIONS 204(B) AND 301(10) OF THE ACT OF OCTOBER 15,
26 1980 (P.L.950, NO.164), KNOWN AS THE "COMMONWEALTH ATTORNEYS
27 ACT."

28 (D) THE ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS THE
29 "REGULATORY REVIEW ACT."

30 (b) When the same or substantially similar evidence is

1 relevant and material to the matter in issue in applications and
2 claims filed by more than one individual or in multiple
3 applications and claims filed by a single individual the same
4 time and place for considering each such application and claim
5 may be fixed, hearings thereon jointly conducted, a single
6 record of the proceedings made and evidence introduced with
7 respect to any application or claim considered as introduced
8 with respect to all of such applications or claims: Provided,
9 That in the judgment of the board or referee having jurisdiction
10 of the proceeding such consideration will not be prejudicial to
11 any party.

12 SECTION 505.1. PLACE OF HEARING.--[HEARINGS] IN-PERSON <--
13 HEARINGS ON APPEALS SHALL BE HELD WITHIN THE COUNTY IN WHICH THE
14 EMPLOYEE REGULARLY REPORTS FOR WORK. SUCH HEARINGS MAY BE HELD AT
15 THE COUNTY SEAT OR AT SUCH OTHER SUITABLE PLACE OR PLACES WITHIN
16 THE COUNTY AS THE BOARD SHALL DESIGNATE, AND WHEN ALL OF THE
17 PARTIES TO ANY APPEAL AND THE BOARD AGREE, SUCH HEARINGS MAY BE
18 HELD AT ANY SUITABLE PLACE.

19 Section 2. This act shall take effect in 60 days.