

Appeals of Unemployment Decisions

How to Prepare for the Appeal Hearing



For more information:
jobs.utah.gov/appeals

Attention:

Please **READ CAREFULLY** before your scheduled hearing.

For more information: jobs.utah.gov/appeals



**UTAH DEPARTMENT OF WORKFORCE SERVICES
ADJUDICATION DIVISION**

Appeals Unit
P.O. Box 45244
140 East 300 South
Salt Lake City, UT 84145-0244

801-526-9300 or 1-877-800-0671
Fax: 801-526-9242



Equal Opportunity Employer Program

Auxiliary aids and services are available upon request to individuals with disabilities by calling (801) 526-9240. Individuals with speech and/or hearing impairments may call Relay Utah by dialing 711. Spanish Relay Utah: 1-888-346-3162

Contents

Guide to the Unemployment Insurance Process.....	4
Notice of Unemployment Appeal Telephone Hearings	4
How the Appeal Hearing Works.....	5
Preparing for the Appeal Hearing	5
Prepare and Participate Even If You Are Not the Appealing Party.....	5
Prepare to Present Relevant Facts.....	6
Accommodations.....	6
Attorney or Other Representative.....	6
Witnesses and Subpoenas.....	6
Documents and Other Evidence	7
Failure to Participate in the Hearing	7
Rescheduling a Hearing	7
Withdrawal	7
Reporting Address Changes	8
Questions About the Appeal Process.....	8
Appeal Decisions and Further Appeal Rights.....	8
Tips for the Hearing.....	9

Guide to the Unemployment Insurance Appeals Process

Unemployment Insurance (UI) is paid to a person (claimant) who is eligible under the law. Any initial UI benefit decision issued by the Utah Department of Workforce Services may be appealed by a claimant or employer who disagrees with the decision. If Workforce Services does not reverse its decision after reviewing the appeal request, an appeal hearing will be scheduled.


Attention Claimant: If you are still unemployed, you must continue to file weekly UI claims throughout the appeals process if you wish to be paid benefits for those weeks. You will not be paid for any weeks not filed timely unless you can show good cause for late filing. If you need to reopen your claim or request backdating of your claim call the Claims Assistance and Re-Employment Team 801-526-4400.

Notice of Unemployment Appeal Telephone Hearings

The appeal hearing will be scheduled to take place by telephone. The “Notice of Unemployment Appeal Telephone Hearing” lists the date and time of the telephone hearing. You will be sent a Notice of Unemployment Appeal Telephone Hearing when:

- Workforce Services made a decision about unemployment benefits, and;
- A party disagreed with Workforce Services’ decision and filed an appeal. (The “parties” are usually the claimant who claims benefits, the employer liable for costs on the claim, and Workforce Services); and
- You are one of the parties.

The notice also explains the procedure to confirm your participation in the hearing. Follow the instructions on the notice of hearing. All parties are required to call the Appeals Unit before the hearing to confirm the phone number they want to use for the hearing.

 **NOTE:** Be sure to contact the Appeals Unit even if you believe Workforce Services already has your telephone number. If you fail to confirm in advance, the hearing may be canceled or you may not be able to participate in the hearing.

Before the hearing starts make sure:

- Your phone is working and fully charged.
- You keep the line clear to receive the call from the Administrative Law Judge (ALJ).
- You are in a location with good reception and free from background noise so you will be clearly heard. If the ALJ or another person cannot hear you or your witness clearly, the ALJ may stop the hearing and schedule it for another time.
- You are not driving a vehicle. ALJs do not conduct hearings with parties or witnesses who are driving a motor vehicle.

If you are not called after waiting 10 minutes from the time the hearing was supposed to start, immediately call the Appeals Unit at 801-526-9300 or toll free 1-877-800-0671.

If you do not have access to a telephone, contact the Appeals Unit right away and arrange to use a telephone at a Workforce Services office near you.

A payphone should not be used unless absolutely necessary. If you must use a payphone, be sure it will accept incoming calls and is free of background noise.

How the Appeal Hearing Works

An Administrative Law Judge (ALJ) will conduct the appeal hearing. The hearing will only deal with issues relating to the appeal request. Most separation from employment hearings last between 30 and 60 minutes.

The hearing is for all interested parties to present their case to the ALJ. Anyone with an interest in the outcome of the hearing is a “party” to the hearing. If you get a notice of hearing, it means you are a party to the appeal case. The ALJ can only decide the facts of the case based on the sworn testimony and evidence presented at the hearing. You should participate in the hearing to make sure your testimony and evidence is considered in deciding the case. The hearing is a fact-finding conference call.

At the hearing the ALJ will:

- Record the hearing
- Explain the hearing process
- Answer any questions a party has about the appeal process
- Question parties and witnesses under oath
- Receive papers and other exhibits

At the hearing each party can:

- Present necessary witnesses and exhibits
- Question parties and witnesses
- Respond to testimony and evidence presented by others

The ALJ will issue a written decision after the hearing. It will be based only on the sworn testimony and evidence presented at the hearing. The decision will affirm, modify, or reverse the decision being appealed. If an allowance of benefits is reversed, an overpayment may be established. The ALJ decision is usually issued one to ten days after the hearing date. If you have not received the ALJ decision by the 10th day after the hearing was held, contact the Appeals Unit to find out if there is some reason for the delay.

Appeal decisions are made according to the Utah Employment Security Act and related rules (Utah Code Section 35A, Title R994). For information on ALJ performance standards, see Utah Department of Human Resource Management Rule R477-101.

Preparing for the Appeal Hearing

The hearing with the Administrative Law Judge (ALJ) is your only chance to present everything important to the case. Take time to prepare for your hearing by:

- Knowing the issue(s) involved.
- Reading the notice of hearing and all the included documents (marked as exhibits).
- Getting documents that help prove your facts and send copies to the ALJ and the opposing party. Be ready to explain company records, abbreviations, and technical terms or symbols.
(See Documents and Other Evidence)
- Arranging for witnesses to attend who support your side of the case. Do not rely only on the written statements of others as part of your evidence presentation.
(See Witnesses and Subpoenas)
- Making a list or summary of key information so you will remember what you want to present at the hearing.

Prepare and Participate Even If You Are Not the Appealing Party

The Administrative Law Judge’s (ALJ) decision is based only on what is presented at the hearing. You must participate and be prepared to present and defend your position if you wish your point of view to be considered. If you choose not to participate, the hearing will take place without you, and the decision will be based on the other party’s evidence presented at the hearing.

If you are the claimant and you do not attend the hearing, you may be denied future benefits. You may also have to repay benefits already received.

If you are the employer and do not attend the hearing, your unemployment tax rate may go up if the employer is found liable for the cost of the benefits paid to the claimant.

Prepare to Present Relevant Facts

Facts — not conclusions — are the basis of a good case. Be prepared to answer the questions of who, what, when, where, and why. Saying that an employer is unfair or that an employee does poor work is a conclusion. Prepare facts that prove the point you wish to make, and present evidence and witnesses that will verify the facts reported at the hearing.

Prepare to prove your point of view on the issues under appeal, not on issues unrelated to the appeal. Some people incorrectly think that unemployment insurance is based on financial need. If you only argue that you need the money, or that you wish to protect an employer's tax rate, you are not prepared to address the issues on appeal.

Accommodations

Persons with a disability may request a reasonable accommodation. If you need an accommodation to participate, contact the Appeals Unit when you receive the Notice of Hearing so necessary arrangements can be made before the scheduled hearing date.

Hearings are conducted in English. If your English is limited, or if you are reading this information on behalf of a person whose knowledge of English is limited, contact the Appeals Unit immediately to request an interpreter for the appeal hearing. The Appeals Unit can arrange to have an interpreter or other forms of assistance available for the hearing. There is no charge for these services.

Attorney or Other Representative

Most parties at the hearing represent themselves. The Administrative Law Judge (ALJ) will explain the hearing process, question the parties or witnesses, and help you ask questions if needed. You have the right to be represented by any person at your own expense. The person does not need to be a lawyer.

If you choose to hire a representative, contact your representative immediately to give that person time to prepare for the hearing. It is your responsibility to notify your representative of the time of the hearing and to pay

any fees charged to you. (Non-Attorneys representing claimants may NOT bill for their services without the ALJ's prior approval of their fees).

Witnesses and Subpoenas

You should arrange for any witnesses who support your case to testify at the scheduled hearing. Eyewitnesses are best. The Administrative Law Judge (ALJ) will decide which witnesses will be allowed to testify. Witnesses may be excluded from the telephone hearing until they are called to testify.

Contact any witnesses right away to arrange for them to participate in the hearing by telephone. If they are not available to participate, you may be able to reschedule the hearing. If the witnesses must participate by telephone at another location, have those phone numbers available for the ALJ.

If an essential witness refuses to participate in the hearing or will not provide essential documents, they may be ordered or subpoenaed. A subpoena is a paper that orders the person to participate in the hearing or provide records. You must ask the ALJ to issue a subpoena at least three days prior to the day of the hearing. You must provide the mailing address of the person you want to subpoena. If a fax number is available, provide that also. Have this information when you call the Appeals Unit.

Before you ask witnesses to participate at the hearing, be sure you need their testimony. **The best witnesses are those who were personally involved in the events that are being explained to the ALJ. When a witness testifies about what someone else said happened, this is "hearsay" and is not helpful in making a decision.** Hearsay is also a spoken or written statement made by a person who does not personally appear to testify under oath in the hearing. Hearsay is allowed in the hearing, but is not convincing if it is disputed.

No finding of fact or decision may be based solely on unsupported hearsay evidence. Hearsay evidence carries less weight and credibility than firsthand testimony, especially if the other party disputes that information. You should have the witnesses themselves who made the statements or observations available to testify during the hearing. Do not rely on documents or witnesses who have no firsthand knowledge of events.

Documents and Other Evidence

Start preparing for the hearing as soon as you file your appeal or receive notice that the other party has appealed. You may need written evidence to help support your case. Copies of the documents that will be used as exhibits in the hearing are sent with the Notice of Hearing. Read them carefully and have them available during the hearing.

Examples of written evidence are: letters, time cards, medical reports, company policies, performance evaluations, written warnings, etc. For the written evidence to be admitted as evidence, you must be able to explain who prepared the document or paper, what its purpose is, and how it helps your case. If you need records that are not available to you, call the Appeals Unit about getting an order or subpoena for the documents.

If you want the Administrative Law Judge (ALJ) to look at other documents not included with the Notice of Hearing, you must mail or fax a copy of these papers to the Appeals Unit and to any other party who received notice of the hearing at least three calendar days before the hearing. The addresses for other parties to the case are listed on the Notice of Hearing. Failure to provide the other party with the documents sent to the Appeals Unit may result in your documents not being admitted. The Appeals Unit will NOT send the other parties copies of your documents for you.

If it is necessary to submit numerous documents, prepare a summary of the information. Copy and submit only those pages of a handbook, manual, rules, or policy book, etc., that contain necessary information.

To draw attention to a particular part of the information, use a black pen to mark in the margin or underline the important parts. **DO NOT USE A HIGHLIGHTER.** When copied or faxed, highlighter can block out what you wanted the ALJ to see.

Failure to Participate in the Hearing


If you asked for the hearing, but **you do not call in advance to confirm participation as required**, or you fail to answer the call at the time of the hearing, your appeal will be dismissed. The decision you appealed will remain the same.

Only evidence given at the hearing can be used by the Administrative Law Judge (ALJ) to reach a decision. If you do not participate in the hearing, the ALJ will only get to hear one side of the story and will base the decision on that evidence.

If you cannot participate and cannot telephone the Appeals Unit before the hearing, you must submit a **written** request for another hearing **within 10 days after the date on the ALJ's decision**. You will have to explain why you did not attend. If your request is filed more than 10 days after the ALJ's decision is issued, you must also explain why you filed a late request for a new hearing date.

Rescheduling a Hearing

You must make every effort to participate in the hearing at its scheduled date and time. After you receive the Notice of Unemployment Appeal Telephone Hearing, call the Appeals Unit immediately if you cannot participate at the scheduled date and time.

 **NOTE:** To ensure a prompt hearing, rescheduling requests are rarely granted. You are expected to take time off from your everyday activities, including work, school, vacation, doctor appointment, etc., to participate in the appeal hearing. A request for rescheduling may be granted due to a crisis or an unusual circumstance.

You must speak directly with an Appeals Unit worker when requesting to reschedule the hearing. Only an Appeals Unit worker can approve your request. Approval is not automatic. Be prepared to give specific details as to the reason for the request. If you are not specifically told your request was granted, you should plan to take part in the hearing as originally scheduled.

Withdrawal

Only the party who submitted the appeal may request that the appeal be withdrawn. If you filed the appeal and decide you no longer want to appeal the decision, you can withdraw your appeal. If you withdraw your appeal, the decision you appealed will stay the same.

The easiest way to withdraw your appeal is to call the Appeals Unit. You will have to talk to an Administrative Law Judge to confirm your identity and explain why you decided to withdraw your appeal. You can also withdraw your appeal by mailing or faxing a letter to the Appeals Unit.

Reporting Address Changes

If you elected to receive your UI correspondence electronically, letters and notices from the Appeals Unit and the Workforce Appeals Board will be sent to you electronically as well.

It is very important that we have your correct mailing address. Contact the Appeals Unit right away if your mailing address changed after you sent in your appeal request.

Failure to provide notice of an address change may cause you to miss your chance to participate in an appeal hearing.

Questions About the Appeal Process

To preserve a bias-free hearing and decision, the parties are not allowed to speak with the assigned Administrative Law Judge (ALJ) about the facts of the case.

The only exception would be to discuss procedural matters that need to be resolved before the hearing. Under no circumstances will the ALJ be allowed to give legal advice to either party. If you have questions or concerns about your hearing, contact:

APPEALS UNIT

Telephone: 801-526-9300

Toll-free: 1-877-800-0671

Fax: 801-526-9242

Address:

Utah Department of Workforce Services
Appeals Unit
P.O. Box 45244
140 East 300 South
Salt Lake City, UT 84145-0244

Appeal Decisions and Further Appeal Rights

A decision will be issued as quickly as possible. A decision will usually be sent to the parties within 10 days of the completed hearing. The decision will give the facts of the case as decided by the Administrative Law Judge (ALJ), and the law and reasons for the ALJ's decision. The ALJ's decision will either affirm, reverse, or modify Workforce Services' initial decision. If you have not received the ALJ's decision by the 10th day after the hearing was held, contact the Appeals Unit to find out the reason for the delay.

If you believe the ALJ's decision is incorrect, you have the right to appeal that decision. The ALJ's decision will state how to file an appeal with the Workforce Appeals Board (Board). The Board is a three-person panel appointed by the governor to provide an independent review of decisions made by the ALJ.

You have 30 calendar days from the date the ALJ's decision is issued to file your appeal with the Board. Your appeal must be in writing listing the claimant's name, case number, and why you disagree with the ALJ's decision. **You must sign the appeal.** You may submit the appeal to the Board using one of the following methods:

1. Mail:

WORKFORCE APPEALS BOARD
PO Box 45244
Salt Lake City, UT 84145-0244

2. Fax: 801-526-9244

3. Online: jobs.utah.gov/appeals

The Board does not hold a new hearing of the issue(s) appealed. It reviews the record of the hearing held by the ALJ. The record consists of the testimony and written evidence, or exhibits, presented.

The Board may send your case back to the ALJ for additional evidence if you can show that you had good reasons for not presenting that evidence at the hearing.

The Board also will consider any written arguments you want to present. After reviewing the case, the Board will issue a decision to affirm, reverse, or modify the ALJ's decision.

If you have questions about an appeal to the Board, call the Board at 801-526-9310.

Tips for the Hearing

- Before the hearing, write down what you want to tell the Administrative Law Judge (ALJ). List the points you want to cover at the hearing. Use this list to prepare your testimony. Check it at the hearing to make sure you cover everything.
- Be sure to talk to your witnesses as soon as possible. Find out what they know that can help your case and find out if they are willing to testify. If they are reluctant or afraid, call the Appeals Unit right away and explain the problem. Do not wait until the hearing.
(See Witnesses and Subpoenas)
- Write down questions you want to ask witnesses. Make your questions short and to the point. Ask only one question at a time. Take notes when listening to witnesses so you remember any questions you wish to ask them.
- Send any additional written evidence to the ALJ and the other party prior to the hearing.
(See Documents and Other Evidence)
- Be prompt. Be at the phone number you provided for the hearing at least 10 minutes before the hearing. Hearing time is limited.
- When you testify, tell the truth. Witnesses testify under oath and are subject to the perjury laws of the state of Utah. Do not guess. If you do not know the answer, tell that to the ALJ. If you do not understand the question, tell that to the ALJ as well. Do not ask other witnesses to answer for you.
- Do not repeat the same information that you or someone else has already explained or described at length.
- Do not interrupt when someone else is speaking. Do not answer for a witness who has forgotten a date or event. You can fully explain your side of the story when it is your turn to testify.
- Make sure your evidence relates to the issues being appealed. For example:
Claimants: If you were discharged, do not talk about why you wanted to quit.
Employers: If you discharge an employee for production problems, do not talk about attendance violations.
- Do not argue or get angry during the hearing. You will do a much better job presenting your case if you stay calm.
- If you are not sure what to do during the hearing, ask the ALJ. If you believe something important is being left out, be sure to tell the ALJ during the hearing.