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**OKLAHOMA**  
**Employment Security Commission**

Office of General Counsel

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December 4, 2023

Re: *Proposed Changes to Okla. Admin Code Title 240*

A public hearing for comments regarding proposed permanent amendments to Title 260, Chapters 3, 10, and 15 has been scheduled as follows:

The public hearing will be held at 9:00 a.m. on January 17, 2023, at the Oklahoma Employment Security Commission, 5th Floor Room 511, Will Rogers Building, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma. Anyone who wishes to speak must sign in at the door by 9:00 a.m.

You may submit written comments through January 12, 2024, to Andrew Chilson, OESC Legal Department, 2401 North Lincoln Boulevard, P.O. Box 53039, Oklahoma City, OK 73152, or [andrew.chilson@oesc.ok.gov](mailto:andrew.chilson@oesc.ok.gov).

**ACCEPTED**

11/9/23

OFFICE OF ADMINISTRATIVE RULES  
**OKLAHOMA SECRETARY OF STATE**  
DOCKET# 23-880 OAR/cert CN

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 1. GENERAL PROVISIONS**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Records and Inspections

240:1-3-3. Confidential records [AMENDED]

240:1-3-6. Search Fees [AMENDED]

240:1-3-7. Receipt of requests [AMENDED]

**SUMMARY:**

240:1-3-3. Confidential Records. The proposed amendment adds additional methods (mail, email, or fax) to request records.

240:1-3-6. Search fees. The proposed amendment adds language to address record requests which would cause excessive disruption of office function, and increases the search fee from \$10.00 per hour to \$25.00 per hour to better account for staff time.

240:1-3-7. Receipt of requests. The proposed amendment provides greater flexibility for service of documents to the agency by adding the ability to appoint a designee to accept service.

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §§ 4-302, 4-304, 4-310.1; and 75 O.S. § 250.2(B).

**COMMENT PERIOD:**

The comment period will run from December 5, 2023 to January 12, 2024 at 5:00 p.m. Written comments may be sent to the following address: Andrew Chilson, OESC Legal Department, 2401 North Lincoln Boulevard, P.O. Box 53039, Oklahoma City, OK 73152, or [andrew.chilson@oesc.ok.gov](mailto:andrew.chilson@oesc.ok.gov).

**PUBLIC HEARING:**

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**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The OESC requests that business entities affected by these proposed rules provide the OESC, within the comment period, in dollar amounts if possible, the increase in the level of direct services, revenue loss or other costs expected to be incurred by costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this

information in writing to Andrew Chilson, at the above address, before the close of the comment period January 12, 2024 at 5:00 p.m.

**COPIES OF PROPOSED RULES:**

Proposed rules are available for review at the OESC, North Lincoln Boulevard, Oklahoma City, OK 73152. The proposed rules are also available on the OESC website at <https://oklahoma.gov/oesc/about/policies.html>.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared and available on the OESC website at <https://oklahoma.gov/oesc/about/policies.html> beginning December 5, 2023.

**CONTACT PERSON:**

Andrew Chilson, General Counsel, (405) 962-4654, [andrew.chilson@oesc.ok.gov](mailto:andrew.chilson@oesc.ok.gov).

**ACCEPTED**                      11/9/23  
OFFICE OF ADMINISTRATIVE RULES  
**OKLAHOMA SECRETARY OF STATE**  
DOCKET# 23-881 OAR/cert CN

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
- 240:10-1-2. Definitions [AMENDED]
- 240:10-1-3. Time computation [AMENDED]
- Subchapter 3. Benefits
- Part 5. Eligibility
- 240:10-3-20. Instructions to secure work [AMENDED]
- Subchapter 5. Contributions
- Part 3. Rates
- 240:10-5-11. Subject employer acquiring the experience rating account of another employer [AMENDED]
- 240:10-5-12. Nonsubject entity acquiring the experience rating account of an employer [AMENDED]
- 240:10-5-15. Successor acquiring the experience rating account of predecessor [AMENDED]
- Part 7. Collection of Contributions
- 240:10-5-32. Application of payments to delinquent tax indebtedness [AMENDED]
- Part 19. Maintenance and Production of Work Records
- 240:10-5-91. Employer's Quarterly Contribution Wage Reports [AMENDED]
- 240:10-5-96. Application for Oklahoma UI Tax Account Number [AMENDED]
- Subchapter 11. Assessment Board Procedure
- Part 5. Hearings
- 240:10-11-23. Telephone hearings [AMENDED]
- Subchapter 13. Appeal Tribunal Procedure
- Part 1. General Provisions
- 240:10-13-4. Organization [AMENDED]
- Part 5. Hearings
- 240:10-13-32. Telephone hearings [AMENDED]
- 240:10-13-33. Notice of hearing [AMENDED]
- 240:10-13-47. Documents and electronically recorded or stored information [AMENDED]

**SUMMARY:**

240:10-1-2. Definitions. The proposed amendment changes the definition of “good cause” to address inconsistency between the two different definitions in the rules.

240:10-1-3. Time computation. The proposed amendment clarifies that all time periods are calculated using calendar days, without exception to period less than 11 days (to address issues with attorneys applying Oklahoma state court timing rules).

240:10-3-20. Instructions to secure work. The proposed amendment gives the agency greater flexibility to increase the number of work searches.

240:10-5-11, 5-12, and 5-15. The proposed amendment deletes reference to repealed statute.

240:10-5-32. Application of payments to delinquent tax indebtedness. The proposed amendment aligns the rule addressing minor employer account credits with the agency system of automation.

240:10-5-91. Employer's Quarterly Contribution Wage Reports. The proposed amendment adds a minor fee for processing paper checks for contribution payments.

240:10-5-96. Application for Oklahoma UI Tax Account Number. The proposed amendment updates the procedure for an employer to file for a UI tax account number using the employer portal.

240:10-11-23. Telephone hearings. The proposed amendment clarifies that registration for assessment board administrative hearings must be done in accordance with the notice of hearing.

240:10-13-4. Organization. The proposed amendment clarifies gives greater flexibility to the agency with respect to reporting structure for the appeal tribunal.

240:10-13-32. Telephone hearings. The proposed amendment clarifies that registration for appeal tribunal administrative hearings must be done in accordance with the notice of hearing.

240:10-13-33. Notice of hearing. The proposed amendment gives the agency the option to transmit notices of hearing electronically.

240:10-13-47. Documents and electronically recorded or stored information. The proposed amendment imposes limits on the number of exhibits for appeal hearings unless good cause is shown, and requires exhibits be numbered.

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §§ 4-302, 4-304, 4-310.1; and 75 O.S. § 250.2(B).

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costs such as reporting, recordkeeping, equipment, construction, and labor to the particular business entity due to compliance with the proposed rule. Business entities may submit this information in writing to Andrew Chilson, at the above address, before the close of the comment period January 12, 2024 at 5:00 p.m.

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<p><b>ACCEPTED</b> 11/9/23 OFFICE OF ADMINISTRATIVE RULES <b>OKLAHOMA SECRETARY OF STATE</b> DOCKET# <u>23-882</u> OAR/cert <u>CN</u></p>
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**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 15. BOARD OF REVIEW PROCEDURES**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Appeals to the Board of Review

240:15-3-2. Correspondence with Board of Review; ~~address~~ [AMENDED]

**SUMMARY:**

240:15-3-2. Correspondence with Board of Review. The proposed amendment removes phone number because appeals cannot be filed by phone, and removes language relating to the contents of appeal to align with statutory definition of what consists of the record.

**AUTHORITY:**

Oklahoma Employment Security Commission; 40 O.S. §§ 4-302, 4-304, 4-310.1; and 75 O.S. § 250.2(B).

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**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 1. GENERAL PROVISIONS**

**SUBCHAPTER 3. RECORDS AND INSPECTIONS**

**240:1-3-3. Confidential records**

(a) Employer and unemployment insurance claimant records made confidential under Title 40 O.S., Section 4-508, may be released upon receipt of an administrative subpoena, court order or a notarized waiver of confidentiality signed by the person with the authority to waive the confidentiality of the records. No records shall be released unless the administrative subpoena, court order, or notarized waiver of confidentiality is dated within ninety days of the request for retrieval or reproduction of the requested records.

(b) The administrative subpoena, court order or waiver of confidentiality form shall be served on the Commission's legal division or the custodian of records via mail, email, or fax twenty (20) days prior to the date on which the records are to be produced. The records requested shall be described as specifically as possible and the administrative subpoena, court order or waiver of confidentiality form shall set out the employer account number or social security number of the employer or claimant whose records are being requested.

(c) An employer or unemployment insurance claimant with proper identification can request a copy of his or her records at the Commission's local office or at the administrative office located in the Will Rogers Memorial Office Building in Oklahoma City.

**240:1-3-6. Search fees**

The search fee shall be applicable to all confidential records requested for commercial purposes or which would cause excessive disruption of office function, unless it is determined by the Director, in his or her discretion, that the public interest is served to such an extent that no charge should be applicable. The search fee will be ~~\$10.00~~ \$25.00 per hour, with a minimum of one hour charge for each account or claimant record requested. No search fee will be charged for the production of non-confidential records.

**240:1-3-7. Receipt of requests**

All requests for inspection or release of information, administrative subpoenas, court order or waivers of confidentiality shall be served upon the Legal Department of the Oklahoma Employment Security Commission, their designee, or the Custodian of Records for the records requested. The Executive Director of the Oklahoma Employment Security Commission shall designate the Custodian of Records

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**240:10-1-2. Definitions**

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

"Business Process Transformation" means a change from paper and pencil process to integrated digital technology.

"Commuting distance" means an automobile driving distance of fifty (50) miles from a claimant's place of residence.

"Electronic" or "Electronic e-filing" means submission by email or other digital transmission.

"Full-time work" means employment in thirty-two (32) or more hours of work per week.

"Good cause" means ~~reasons beyond the control of the party seeking relief~~ a situation beyond the control of the parties. Situations considered beyond the control of a party may include, among other factors, a disabling personal illness, death in immediate family, jury duty, or military obligations. Good cause will not be found if the failure to act is due to the negligence or inattentiveness of the party or the party's representative or attorney-at-law.

"High volume employer" means any employer entity that files more than 30 protests in any month during the previous calendar year in response to benefit claim notices on behalf of itself or client employers.

"Interested Party" means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. § 2-503 (E) and 2-507.

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal – the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

"Leases" and "Rents" means a contract between an owner of a business, building, or property and a leasee, in which:

(A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the leasee;

(B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and

(C) Is not based upon a percentage of income or revenue earned in the trade or business.

"Mail", "Mailed", and "Mailing", as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. § 7502(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

"Pandemic" means a health state of emergency declared by the Governor.

"Part-time work" means employment of less than thirty-two (32) hours of

work in a week.

"Reasonable cash value" [40:1-218] means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

"Reemployment Services" means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

"RESEA" means Re-Employment Services and Eligibility Assessment.

"RESEA Selection" means:

(A) A systematic computer generated process that:

(i) Identifies those claimants most likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(ii) Refers identified claimants to reemployment services; and

(iii) Collects follow-up information relating to the services received.

(B) Data elements which may be used in the identification process for RESEA selection are:

(i) Recall status;

(ii) Union hiring hall agreement;

(iii) Education;

(iv) Job tenure;

(v) Industry;

(vi) Occupation;

(vii) Unemployment rate;

(viii) Number of prior UI claims; and

(ix) Maximum weekly benefit amount.

(C) Data elements prohibited for usage in RESEA selection are:

(i) Age;

(ii) Race or ethnic group;

(iii) Sex;

(iv) Color;

(v) National origin;

(vi) Disability;

(vii) Religion;

(viii) Political affiliation; and

(ix) Citizenship.

"Temporary help firm" means any firm or entity that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, or special assignments and projects.

"Temporary Layoff" means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date. A temporary layoff may be requested by an employer for no more than eight (8) weeks in any benefit year. A request for a temporary layoff must be made by the employer to the Commission in writing and must include a specific recall date within eight (8) weeks of the cessation of work or employment. The employer may apply to the Commission for an extension of the recall date. The extension shall not exceed four (4) additional weeks in the benefit year.

"Temporary Layoff-Federal" means a short-term cessation of work or employment in cases involving a federal agency or federal contractor with employees who have agreed to refrain from seeking employment elsewhere as part of their terms of employment when work is ceased due to the needs of the federal government, and the federal employer or federal contractor maintains an attachment to an employee by means of its contract of employment. In these cases, a recall date will not be required. The provisions of 40 O.S. §2-105.1 on reimbursed pay or back pay shall apply to this type of temporary layoff.

"Third Party Administrator" means any entity that contracts with an employer to perform administrative functions on the employer's behalf related to the employer's compliance with any provision of the Employment Security Act of 1980, or any entity that contracts to represent the employer's interests in any protests, appeal or hearing before any division of the Oklahoma Employment Security Commission or the Board of Review. Attorneys licensed to practice law in Oklahoma who represent clients before the Oklahoma Employment Security Commission, or the Board of Review shall not be considered third party administrators.

"Wages"

(A) "Gratuities" or "Tips" The employer shall include as wages all monies paid as gratuities or tips received by an individual in the course of his or her work pursuant to 40 O.S. Section 1-218 or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) "Noncash remuneration" Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services except for meals and lodging that are furnished on the business premises of the employer for the convenience of the employer pursuant to 40 O.S. Section 1-218(6).

"Wages paid"

(A) The term "wages paid", as defined in 40 O.S. Section 1-219, shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

"Week" For the purpose of paying benefits and for the purpose of this Chapter, a "week" as defined in 40 O.S. §1-220 shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.

"Working day" means:

(A) For employers, any day the employer is open and conducting its regular business activities.

(B) For claimants, any day the claimant's employer or former employer scheduled the claimant to work and the claimant was present and working at his or her assigned activities for part or all of the scheduled work hours for that day.

"Written notice" means submission by electronic e-filing or by mail.

### **240:10-1-3. Time Computation**

(a) In computing any period of time prescribed or allowed by the Employment Security Act of 1980, by these rules, or by order of a hearing officer, the day of the act, event, or default from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. Time computation shall be calculated utilizing calendar days without exception for time periods less than eleven (11) days, and tThe last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, an Executive Order, or the Federal Statutes, or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, an Executive Order, or the Federal Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m.

(b) This rule shall not apply to the calculation of the time period set out in rule 240:10-3-23.

## **SUBCHAPTER 3. BENEFITS**

### **240:10-3-20. Instructions to secure work**

(a) Able and available to accept employment. When a claimant files an initial claim for benefits, the Commission shall instruct the claimant that, in addition to registering for work in the Oklahoma labor exchange system or the system in the state in which the claimant resides, the claimant must diligently search for suitable employment.

(b) Seek and accept work. The Commission shall require claimants to diligently search for work in a prudent manner that would be expected to secure work using any means that are appropriate and suitable each week. A diligent work search requires that a claimant make the minimum number of weekly work search contacts as required by the OESC ~~two (2) work search efforts each week~~ and consists of some combination of the following elements:

- (1) Union members must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.
- (2) Participation in reemployment services offered to the claimant by the Commission or any other State Employment Service.
- (3) Submit weekly job applications for work with suitable employers.
- (4) Register for work, create, and upload a resume with the state's labor exchange system, job boards, placement service of any professional organization the claimant is a member of, temporary work agencies, or educational institution with job placement offices;
- (5) Participate in scheduled reemployment services offered by the Oklahoma Employment Security Commission in Workforce Oklahoma Centers or complete similar online or self-service activities.
- (6) Participate in employment and training services provided by partner programs in Workforce Oklahoma Centers;
- (7) Participate in work-related networking events sponsored by the Oklahoma Employment Security Commission (e.g., job clubs, job fairs, industry association events, networking groups, etc.);

- (8) Taking a civil service exam or examinations for work in a governmental agency;
  - (9) Participate in interviews with employers (virtually or in-person); or
  - (10) Any other work search activities prescribed by the Commission.
- (c) Increase of work search requirements. The number of work search efforts described in subsection (b) of this rule shall be increased at the discretion of the Commission ~~based on the circumstances of each claimant~~ if the claimant has not received a job offer within the first six (6) weeks of unemployment.
- (d) Activity log. The claimant is required to maintain the Commission provided work search activity log, as well as, any associated documentation and make it available for review by Commission representatives, upon request.
- (e) Referrals. A claimant who receives job referrals from the Commission that are considered to be appropriate or suitable, as otherwise defined in 40 O.S. §2-408, must apply for the job within one week of receiving the referral, and the claimant must accept employment if suitable work is offered. Claimant may be disqualified to receive benefits pursuant to 40 O.S. §Section 2-417-18.
- (f) Waiver of work search requirement. If an employee is involved in a temporary layoff, a temporary layoff-federal, or is receiving supplemental unemployment benefit payments through an approved plan, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer. The work registration requirement of 40 O.S. §2-204 and work search requirement of 40 O.S. §2-417 may be waived by the Executive Director in consultation with members of the Senior Staff if it is found that claimants in a specific geographic area or region of the state are prevented from making a reasonable work search as a direct result of natural disaster, pandemic, fire, flood, or explosion.
- (g) Work search efforts to the same employer for the same role or position may only be repeated every four (4) weeks. Claimants may search for different roles or positions with the same employer, as desired. If employer initiates a second interview and the claimant completes the interview, the second interview may be considered a work search effort for the claimant.

## SUBCHAPTER 5. CONTRIBUTIONS

### **240:10-5-11. Subject employer acquiring the experience rating account of another employer**

When any employing unit acquires the experience rating account of one or more employers under the provisions of 40 O.S. Section ~~3-111~~ or 3-111.1, and the employing unit was an employer subject to the Employment Security Act of 1980 at the time of the acquisition, the contribution rate for the acquiring employing unit after the acquisition shall be determined as follows:

- (1) The experience rating accounts of the successor employer and the predecessor, or predecessors, shall be consolidated for the experience period immediately preceding the acquisition, and the Benefit Wage Ratio shall be computed on the total experience of all the employers.
- (2) The Benefit Wage Ratio so computed shall be used to determine the successor's contribution rate for the remainder of the calendar year in which the acquisition occurred. The contribution rate so established shall be applicable to the successor employer beginning with the first day of the calendar quarter in which the acquisition occurred.

### **240:10-5-12. Nonsubject entity acquiring the experience rating account of an employer**

(a) One employer acquired. When any employing unit acquires the experience rating account of an employer under the provisions of 40 O.S. Section ~~3-111~~ or 3-111.1, and the employing unit was not an employer subject to the Employment Security Act of 1980 prior to the acquisition, the

employing unit shall acquire the contribution rate of the employer for the entire calendar year in which the acquisition occurred.

(b) Two or more employers acquired. When any employing unit acquires the experience rating account of two or more employers under the provisions of 40 O.S. Sections ~~3-111~~ or 3-111.1, and the employing unit was not an employer subject to the Employment Security Act of 1980 prior to the acquisition, the contribution rate for the employing unit shall be determined by consolidating the experience rating accounts of the two or more employers acquired for the experience period immediately preceding the acquisition, and the Benefit Wage Ratio computed on the total experience of all the employers so acquired. The Benefit Wage Ratio so computed shall be used to determine the successor's contribution rate for the calendar year in which the acquisition occurred.

(c) An employing unit that was not an employer subject to the Employment Security Act of 1980 prior to acquiring the predecessor employer shall not be allowed to acquire the experience rating account or contribution rate of the predecessor employer if the Commission finds that the employing unit acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

**240:10-5-15. Successor acquiring the experience rating account of predecessor**

(a) Notification to transferring employer. When any employing unit acquires a portion of the experience rating account of an employer under the provisions of 40 O.S. Section ~~3-111(B)~~ 111.1, and makes written application for a transfer as provided by the Employment Security Act of 1980, written notice of the application for partial transfer shall be mailed or delivered to the transferring employer by a duly authorized Commission representative after receipt of the application.

(b) Protesting partial transfer. Within twenty (20) days after the date of mailing or delivery of the written notice, the transferring employer may file a written protest to the transfer and request an oral hearing to present evidence in support of the protest. The hearing shall be conducted in the manner prescribed in 40 O.S. Section 3-115. Pending a final determination of the protest, no transfer of experience rating account shall be made. If it is determined that a transfer of a partial experience rating account should be made, then the accounts and contributions of the transferring and acquiring employers shall be adjusted in accordance with the transfer.

(c) Partial transfer to non-subject employer. In the event of a partial transfer of the experience rating account of an employer to an acquiring employing unit, who was not an employer prior to the acquisition, the contribution rate of the acquiring employing unit shall be determined in accordance with the provisions of 40 O.S., Article 3, Part I, based upon the portion of the experience rating account that was transferred. The portion of the experience rating account that was transferred shall not thereafter be used to compute a contribution rate for the transferring employer. The contribution rate computed after the transfer shall be applicable to the acquiring employing unit as of the date of the acquisition.

(d) Partial transfer to subject employer. If the acquiring employing unit was an employer prior to the acquisition and transfer, then the experience rating account that was transferred shall be consolidated with the employer's experience rating account prior to the acquisition, and a contribution rate computed on the combined experience under the provisions of 40 O.S., Article 3, Part I. The contribution rate computed after the transfer shall be applicable to the employer beginning with the first day of the calendar quarter in which the acquisition occurred. The portion of the experience rating account that was transferred shall not be used in computing a contribution rate for the transferring employer for any year subsequent to the year in which the transfer was effective.

**240:10-5-32. Application of payments to delinquent tax indebtedness**

(a) When making payments on a delinquent account, an employer may designate a particular calendar quarter to which he or she wants the payment applied. This designation must be made in writing at the time the payment is made to the Commission.

(b) If an employer designates a particular calendar quarter to which he or she wants the payment applied, the payment shall be applied to the indebtedness owing for the quarter in the following manner:

(1) First, to the interest owing in the designated quarter until the interest amount is paid in full.

(2) Second, to the penalties owing in the designated quarter until the penalty amount is paid in full.

(3) Third, to the fees owing in the designated quarter until the fee amount is paid in full.

(4) Fourth, to the tax owing in the designated quarter until the tax amount is paid in full.

(5) Fifth, to the surtax owing in the designated quarter until the surtax amount is paid in full.

(6) If there is any sum of money left over after the payment has been applied to the indebtedness owing for the designated quarter, the remainder of the money shall be applied as set out in subsection (c) of this section.

(c) If an employer makes a payment on a delinquent account and does not designate a particular quarter to which he or she wants the payment to be applied, the payment will be applied in the following manner:

(1) First, to the interest owing in the earliest delinquent quarter until the interest amount is paid in full.

(2) Second, to the penalties owing in the earliest delinquent quarter until the penalty amount is paid in full.

(3) Third, to the fees owing in the earliest delinquent quarter until the fee amount is paid in full.

(4) Fourth, to the tax owing in the earliest delinquent quarter until the tax amount is paid in full.

(5) Fifth, to the surtax owing in the earliest delinquent quarter until the surtax amount is paid in full.

(6) After the payment has been applied in the manner described in paragraphs (1) through (5) of this subsection, any money left over shall be applied in the same manner to the delinquent quarter that is next in time, and this procedure shall be repeated until the payment is exhausted. If there remains any money upon satisfaction of all prior period indebtedness, the remainder will be present in the employer designated quarter as a credit until additional tax indebtedness is incurred.

#### **240:10-5-91. Employer's Quarterly Contribution Wage Reports**

(a) Due date of report. Each employer shall report both contributions and "wages paid" (as defined in OAC 240:10-1-2) through the Employer Portal on the Commission Internet website, or if an exception has been granted, on paper Form OES-3, Employer's Quarterly Contribution and Wage Report, for each quarterly period in which the employer is subject to the Employment Security Act of 1980, on or before the last day of the month following the calendar quarter to be reported. However, an employing unit which has not previously qualified as an employer under the Employment Security Act of 1980 and who first qualifies as an employer during a calendar year shall file Form OES-3, Employer's Quarterly Contribution and Wage Reports, for all past periods



of that calendar year on or before the due date for the quarterly report for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

(b) Information required.

(1) All instructions furnished with the official forms must be followed.

(2) All information required on the official forms shall be given.

(c) Date of filing. The date of filing of the Employer's Quarterly Contribution and Wage Report shall be determined by the date that an employer's fully completed report form is submitted for filing with the Commission pursuant to 40 O.S. §1-224.

(d) Report filing.

(1) This subsection shall apply to all Employer's Quarterly Contribution and Wage Reports that are due for filing after January 1, 2011.

(2) All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website, unless an exception is granted by the Commission.

(3) All third-party administrators shall be required to file the Employer's Quarterly Contribution and Wage Report through the employer portal on the Commission Internet website for clients with an assigned Oklahoma SUTA account number, unless an exception is granted by the Commission.

(e) Payment of Tax. All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number and all third-party administrators shall be required to pay all amounts due for quarterly state unemployment taxes on or before the last day of the month following the calendar quarter to which the taxes relate. All employers and third-party administrators shall make payment through ACH debit/credit, wire by electronic fund transfer (EFT) or a credit card acceptable to the Commission; unless an exception is granted by the Commission for the employer or third-party administrator to make payment in an alternative method. A \$1.50 service fee per check will be charged to an employer's account if a check is mailed to the Commission for contribution payments.

(f) Authorization. This rule is authorized by 40 O.S. §§3-102, 4-302, and 4-503.

#### **240:10-5-96. Application for Oklahoma UI Tax Account Number**

(a) Each employer must file an application for Oklahoma UI Tax Account Number, ~~OES-1, through the Employer Portal on the Commission's website~~ in order to establish an Oklahoma UI Tax Account. (b) All information requested in the online application ~~blocks 1, 2, 3, 4, and 5 of the form~~ must be completed ~~with all information requested~~ including the social security number of the trustees, owners, directors, officers, partners, corporate officers or members of the entity filing the application.

(c) Applicant will furnish all requested information so that a liability result can be determined. Each applicant will be prompted toward questions that are specific to the type of business enterprise they have identified as operating in Oklahoma. Should the applicant be other than a business principle authorized to encumber the business entity for a tax liability the applicant will provide the contact information of said principle to obtain explicit permission for the contents of the application. ~~Blocks 6 through 17 must be truthfully filled out with all information that is applicable to the entity. The form must be signed by an owner, partner, director, officer or member of the entity in block 18 with the title of the signator and the date of signing specifically stated.~~

(d) If the Commission becomes aware of the existence of an employer that has failed or refused to file an application a form OES-1, the Commission may file an application the form on behalf of the employer using any information the Commission has available to it.

## **SUBCHAPTER 11. ASSESSMENT BOARD PROCEDURE**

### **240:10-11-23. Telephone hearings**

(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.

(b) A request for an in-person hearing must be made five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the employer's name, and an explanation of the reasons for the request.

(c) Requests for in-person hearings will be considered based upon the following:

(1) Good cause shown, such as hearing impairment or language interpretation difficulties.

(2) Geographic location of the parties.

(3) Complexity of the issues.

If the director or designee agrees that the request is reasonable, the case will be rescheduled as an in-person hearing.

(d) Each party to a telephone hearing must exchange all documents that will be introduced as evidence with the opposing party and send a copy to the Assessment Board, at least five (5) days prior to the scheduled date of the telephone hearing.

(e) Parties must register based on instructions on the Notice of Hearing ~~prior to the scheduled time of the hearing~~. Registration may be completed on-line or by telephone. Third party administrators are required to register on-line and will not be allowed to register by telephone.

## **SUBCHAPTER 13. APPEAL TRIBUNAL PROCEDURE**

### **240:10-13-4. Organization**

(a) **Creation of Appeal Tribunal.** The Commission hereby establishes the Appeal Tribunal. A Director shall be appointed by the Commission to administer the duties of the Appeal Tribunal and shall be answerable to the Executive Director or their designee.

(b) **Authority of Director.**

(1) The Director shall have supervisory authority over the Chief Hearing Officer, hearing officers and support staff of the Appeal Tribunal.

(2) The Director or designee may reschedule hearings upon notice to the parties, administratively vacate decisions for good cause, grant or deny request for continuance, and issue subpoenas in Appeal Tribunal cases.

### **240:10-13-32. Telephone hearings**

(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.

(b) A request for an in-person hearing must be received by the Director five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the claimant's name, and an explanation of the reasons for the request.

(c) Request for in-person hearings will be considered based on the following:

(1) Good cause shown, such as hearing impairment or language interpretation difficulties.

(2) Geographic location of the parties.

(3) Complexity of the issues.

(4) Timely disposition of cases as required by federal law.

If the Director or designee agrees that the request is reasonable, the case will be rescheduled as an in-person hearing.

(d) Parties must register based on instructions on the Notice of Hearing prior to the scheduled time of the hearing. Registration may be completed on-line or by telephone. Third party administrators are required to register on-line and will not be accepted by telephone.

**240:10-13-33. Notice of hearing**

The initial notice of hearing with regard to any case shall be mailed or transmitted electronically by the Appeal Tribunal to all interested parties no fewer than 10 days prior to the scheduled hearing, unless all interested parties waive their right to the 10 day notice. Notice of any subsequent hearings with regard to the same case may be given on the record, or by any other means reasonably calculated to provide reasonable notice of the hearing at any time before the hearing is to take place.

**240:10-13-47. Documents and electronically recorded or stored information**

Each party to a hearing before the Appeal Tribunal must deliver all documents and electronically recorded or stored evidence to the Appeal Tribunal at least five (5) days before the date of hearing in order for copies to be made and delivered to the opposing party in preparation for the hearing. Documents must be limited to 50 pages per party unless a showing of good cause for exhibits beyond 50 pages is approved. All documents must be clearly marked with consecutive page numbers.

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
CHAPTER 15. BOARD OF REVIEW PROCEDURES**

**SUBCHAPTER 3. APPEALS TO THE BOARD OF REVIEW**

**240:15-3-2. Correspondence with Board of Review; address**

(a) An appeal from the Appeal Tribunal decision and all instruments and correspondence regarding any matter before the Board of Review shall be sent to Board of Review, Oklahoma Employment Security Commission, P.O. Box 53345, Oklahoma City, Oklahoma 73152. The Board of Review's ~~telephone number is (405) 962-7570, and the telefax number is (405) 962-7540.~~

(b) Correspondence pertaining to an appeal shall bear the name of the case and the Appeal Tribunal docket number. Copies of all documents and correspondence sent to the Board by any party to an appeal shall be sent to the other interested parties by the Clerk. ~~A brief or Memorandum of Law may be filed by the appealing party at the time the appeal is filed. If the non-appealing party desires to respond, a brief or Memorandum of Law shall be filed within ten (10) days from the date the appeal was filed.~~

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION  
RULE IMPACT STATEMENT**

Pursuant to 75 O.S. § 303(D) of the Oklahoma Administrative Procedures Act, the Oklahoma Employment Security Commission's ("Commission") Office of General Counsel, submits the following Rule Impact Statement for their Administrative Code ("OAC") 240.

**I. Brief description of the purpose of the proposed rules:**

The purpose of the proposed rules is as follows:

240:1-3-3. Confidential Records. The proposed amendment adds additional methods (mail, email, or fax) to request records; 240:1-3-6. Search fees. The proposed amendment adds language to address record requests which would cause excessive disruption of office function and increases the search fee from \$10.00 per hour to \$25.00 per hour to better account for staff time; 240:1-3-7. Receipt of requests. The proposed amendment provides greater flexibility for service of documents to the agency by adding the ability to appoint a designee to accept service; 240:10-1-2. Definitions. The proposed amendment changes the definition of "good cause" to address inconsistency between the two different definitions in the rules; 240:10-1-3. Time computation. The proposed amendment clarifies that all time periods are calculated using calendar days, without exception to period less than 11 days (to address issues with attorneys applying Oklahoma state court timing rules); 240:10-3-20. Instructions to secure work. The proposed amendment gives the agency greater flexibility to increase the number of work searches; 240:10-5-11, 5-12, and 5-15. The proposed amendment deletes reference to repealed statute; 240:10-5-32. Application of payments to delinquent tax indebtedness. The proposed amendment aligns the rule addressing minor employer account credits with the agency system of automation; 240:10-5-91. Employer's Quarterly Contribution Wage Reports. The proposed amendment adds a minor fee for processing paper checks for contribution payments; 240:10-5-96. Application for Oklahoma UI Tax Account Number. The proposed amendment updates the procedure for an employer to file for a UI tax account number using the employer portal; 240:10-11-23. Telephone hearings. The proposed amendment clarifies that registration for assessment board administrative hearings must be done in accordance with the notice of hearing; 240:10-13-4. Organization. The proposed amendment clarifies gives greater flexibility to the agency with respect to reporting structure for the appeal tribunal; 240:10-13-32. Telephone hearings. The proposed amendment clarifies that registration for appeal tribunal administrative hearings must be done in accordance with the notice of hearing; 240:10-13-33. Notice of hearing. The proposed amendment gives the agency the option to transmit notices of hearing electronically; 240:10-13-47. Documents and electronically recorded or stored information. The proposed amendment imposes limits on the number of exhibits for appeal hearings unless good cause is shown, and requires exhibits be numbered; 240:15-3-2. Correspondence with Board of Review. The proposed amendment removes phone number because appeals cannot be filed by phone, and removes language relating to the contents of appeal to align with statutory definition of what consists of the record.

**II. Description of the classes of persons who most likely will be affected by the proposed rules, including classes that will bear the costs of the proposed rules, and any information on cost impacts received by the agency from any private or public entities:**

The classes of persons who most likely will be affected by the proposed rules are primarily unemployment benefit claimants, employers, and entities seeking employment records. If the fee change in OAC 240:1-3-6 is adopted, parties seeking employment records will see a \$15.00 increase in search fees. If the new fee in 240:10-5-91 is adopted, employer's choosing to make contribution payments by paper check will see a \$1.50 fee. However, employers using the online system will not be charged a fee. As of the date of preparation of this Rule Impact Statement, the Divisions have received no cost impact statements from any private or public entity.

**III. Classes of persons who will benefit from the proposed rules:**

The classes of persons who will benefit from the proposed rules are unemployment benefit claimants, employers, and entities seeking employment records.

**IV. Description of the probable economic impact of the proposed rules upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:**

Except as noted below, it is not anticipated that the proposed rules will have an adverse economic impact on unemployment benefit claimants or employers. Benefits obtained from the updates, increased efficiency, streamlining, and clarifications provided by such rules could result in cost savings for those parties. The following increased search fee will have an economic impact on entities seeking employment records.

**V. Probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rules, the source of revenue to be used for implementation and enforcement of the proposed rules, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:**

The Commission will benefit from the proposed rules through increased efficiency and streamlining of processes. Revenue from proposed rules regarding new and increased fees should assist in meeting costs associated with operation of the various divisions. It is not anticipated that implementation and enforcement of the proposed rules will result in increased costs for any other agency. There is no anticipated effect on state revenue.

**VI. Determination of whether implementation of the proposed rules will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rules:**

It is not anticipated that implementation and enforcement of the proposed rules will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rules.

**VII. Determination of whether implementation of the proposed rules may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:**

The proposed rules regarding new and increased fees could have an economic impact on small businesses. However, when determining the fee amount, the Divisions attempted to keep the proposed fee as low as possible to recover its costs. Benefits obtained from the updates, increased efficiency, streamlining, and clarifications provided by such rules could result in cost savings for small businesses

**VIII. Explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rules:**

The proposed rules do not increase compliance costs, and there are no nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rules.

**IX. Determination of the effect of the proposed rules on the public health, safety and environment and, if the proposed rules are designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rules will reduce the risk:**

It is anticipated that the proposed rules will not have an adverse effect on the public health, safety, and environment.

**X. Determination of any detrimental effect on the public health, safety and environment if the proposed rules are not implemented:**

It is anticipated that there will be no detrimental effect on the public health, safety, and environment if the proposed rules are not implemented.

**XI. Date of preparation of Rule Impact Statement:**

This Rule Impact Statement was prepared on November 9, 2023.