LOUISIANA WORKFORCE COMMISSION
The Department of Labor

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John Bel Edwards, Governor
Ava Dejoie, Secretary

Office of the Secretary

January 31, 2020

The Honorable Speaker Clay Schexnayder
Ex Officio
House Committee on Labor & Industrial Relations
LA House of Representatives
PO Box 94062
Baton Rouge, LA 70804-9062

Via email to: apa.h-lir@legis.la.gov

The Honorable Senator Troy Carter
Chairman
Senate Committee on Labor & Industrial Relations
LA Senate
P.O. Box 94183
Baton Rouge, LA 70804

Via email to: apa.s-l&ir@legis.la.gov

Electronic Mail - Delivery Receipt Requested

RE: Summary Report - Act 454 Public Hearing

Dear Senator Carter and Speaker Schexnayder:

The Louisiana Workforce Commission (LWC) hereby submits the following summary report required by Act 454 of the 2018 Regular Session of the Louisiana Legislature, codified as La. R.S. 49:953(C)(2), and in accordance with La. R.S. 49:968 (K).

The LWC held the public hearing required by Act 454 on December 20, 2019, as stated in the Potpourri published in the *Louisiana Register* on October 20, 2019. Interested persons were provided an opportunity to submit comments to the LWC regarding any rule of the LWC believed to be contrary to law, outdated, unnecessary, overly complex, or burdensome. There were no attendees at the public hearing.

Twenty written comments were received by the Louisiana Workforce Commission from Rowena Jones and Jessica Ballard of Southeast Louisiana Legal Services (SLLS), and are attached hereto and made a part of this report. All comments were received via email on November 27, 2019. No additional comments, oral or written, were received.

The first comment concerns LAC 40.IV.101, entitled "Office and Officers of the Board of Review". The commenters did not seek to argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. Commenters suggest that the existing rule does not provide for qualifications for training of board members. The qualification requirements for board members, who are appointed by the governor, are set forth in La. R.S. 23:1652. La. R.S:1652 does not require any training for members.

The second comment concerns LAC 40.IV.107, entitled "Computation of Time-Saturdays, Sundays and Holidays". The commenters stated that the wording was difficult for a layperson to understand and suggested expanding the rule to include a description of the computation of time in all notices. LWC believes that the rule, which was intended only to address computation of time periods found in other rules, is clearly written. The rule does not apply to calculation of time periods that are addressed under La. C.C.P. art. 5059. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no further response is required.

The third comment concerns LAC 40:IV.109, entitled "Appeals to the Appeals Tribunal and Board of Review". Commenters seek to expand the rule to require copies of the record to be sent to all parties automatically. Currently, a copy of the record is provided upon request. LWC's practice is in conformity with La. R.S. 23:1629, which provides that "copies of the statements by the claimant and the employer, which were used in the appealed determination, shall be sent with such notice if requested." Commenters also seek an expansion of the rule to accommodate claimant errors when filing appeals. The LWC takes inadvertent errors into consideration when made aware of them in accordance with section B of Rule 109. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no further response is required.

The fourth comment concerns LAC 40:IV.113, entitled "Postponements, Continuances, Reopenings, and Rehearings". Commenters allege that the appellants and appellees are treated differently when a call is missed. The rule requires that an appellant be available within 15 minutes of the scheduled hearing time. Contrary to the assertions of the commenters, appellants that are not available when called the first time are called a second time. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek an acknowledgment regarding telephone hearing systems. As such, no further response is required.

The fifth comment concerns LAC 40:IV.115, entitled "Conduct of Hearing before Administrative Law Judge". The commenters seek to expand the rule to exclude polygraph tests, to forego the reading of the record, and to penalize employers. Commenters did not argue that the rule as written was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no response is required.

The sixth comment concerns LAC 40:IV.117, entitled "Authority to Separate Witnesses (placing Witnesses under the Rule)". The commenters seek to change the authority of the administrative law judges to separate witnesses from optional to mandatory. Under La. R.S. 23:1631, appeals are to be conducted in accordance with regulations prescribed "whether or not such regulations conform to the usual rules of evidence and other technical rules of procedure." The administrative law judges sequester witnesses when necessary to ensure fairness to the parties. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters assert that the current language disadvantages self-represented claimants. As such, no further response is required.

The seventh comment concerns LAC 40.IV.119, entitled "Additional Testimony". The commenters assert that the language is overly broad and vague and express a belief that the rule could be misused. Additionally, commenters question the statutory authority of the rule. As indicated above, the rules need not conform to the usual rules of evidence and other technical rules of procedure under La. R.S. 23:1631. The power to reopen on the administrative law judge's own motion, although seldom exercised, is sometimes necessary when additional testimony is required for a fair decision. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. As such, no further response is required.

The eighth comment concerns LAC 40.IV.127, entitled "Notification of Appeal". The commenters seek to expand the current language of the rule to include other requirements regarding appeals. More specifically, the commenters reiterate the argument for expansion made for Rule 109. See LWC's responses to Rule 109. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no further response is required.

The ninth comment concerns LAC 40.IV.129, entitled "Decision of the Board". Commenters seek to expand the rule to include procedures governing the conduct of the board of review. Commenters did not argue that the rule as written was contrary to law, outdated, unnecessary, overly complex, or burdensome. As such, no response is required.

The tenth comment concerns LAC 40.IV.131, entitled "Issuance of Subpoenas". The Commenters seek to expand the rule to require a copy of a subpoena request be sent immediately to the opposing party. Because many subpoena requests are denied, sending copies of requests that are ultimately denied is costly, burdensome, and would delay the hearing. Instead, a copy of any subpoena that is granted is sent to the opposing party. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no further response is required.

The eleventh comment concerns LAC 40.IV.135, entitled "Disqualification of Representative". Commenters assert that the ability of an administrative law judge or the board to refuse to allow a person to represent others in front of them due to contumacy or unethical conduct does not include any procedure for disqualifying a representative. Commenters assert that a procedure should be added that includes a contradictory hearing and review. Normally, the representative that refuses to obey the instructions of an administrative law judge during the course of the hearing will be disqualified from participation in the remainder of the hearing due to the conduct. Representatives usually are lay people and not attorneys. A hearing on this issue is not legally required, would be inefficient, and would be unfunded. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no further response is required.

The twelfth comment concerns LAC 40.IV.303, entitled "Training of Administrative Law Judges". Commenters seek to expand the rule that addresses training of administrative law judges to include additional training and training for board of review members. Commenters did not argue that the rule as written was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no response is required.

The thirteenth comment concerns LAC 40:IV.313, entitled "Records". Commenters disagree with the requirement that employers maintain "employment" records and advocated that the rule should clearly require records for workers considered independent contractors by the employer. No such change to the rule is required. Employers regularly keep records of all workers including those paid as independent contractors. All such records are readily available to LWC when an audit occurs under R.S. 23:1660. Commenters also suggested that additional rules should be promulgated to address monetary determinations that involve potentially misclassified workers. Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no further response is required.

The fourteenth comment concerns LAC 40:IV.317, entitled "Employer Registration When Required". Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule. As such, no response is required.

The fifteenth comment concerns LAC 40.IV.323, entitled "Separation Notices". Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek to expand the rule and bar employers from participating in hearings. As such, no response is required.

The sixteenth comment concerns LAC 40:IV.324, entitled "Reply to Notice of Eligibility". Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters seek additional language be added to the rule. Commenters suggested adding the word "timely" or the phrase "within the time period provided by statute". The rule already contains appropriate language regarding the period for reply. The rule states that the employer shall respond "within the time specified in the notice". As such, no further response is required.

The seventeenth comment concerns LAC 40:IV.351, entitled "Benefit Determination Notice". Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. Instead, commenters believe the rule is fine as worded, but argue that content readability should be addressed. As such, no response is required.

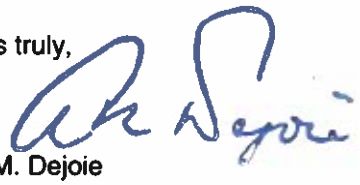
The eighteenth comment concerns LAC 40.IV.368, entitled "Disqualification for Benefits Pursuant to R.S. 23:1601(8)(a)". Commenters argue that the seven days of response time provided for in this rule is not statutorily mandated. The seven days is found under R.S. 23:1601(8)(a). Commenters did not argue that the rule was contrary to law, outdated, unnecessary, overly complex, or burdensome. As such, no further response is required.

The nineteenth comment concerns LAC 40:IV.369, entitled "Waiver of Overpayment Recovery". Commenters seek to revise the rule rather than asserting that it is contrary to law, outdated, unnecessary, overly complex, or burdensome. As such, no response is required.

The twentieth comment concerns LAC 40:IV.371, entitled "Overpayment Recovery". Commenters seek to include in the rule, which only concerns payment schedules, a requirement that overpayment determinations be sent via certified mail. Notices of determinations on claims under R.S. 23:1625 may be "mailed to their last known address". Based on the statute, no change is warranted. Commenters seek to revise the rule rather than asserting that it is contrary to law, outdated, unnecessary, overly complex, or burdensome. As such, no further response is required.

Should you have any questions or need additional information, please contact me directly at adejoie@lwc.la.gov or 225.342.3001.

Yours truly,



Ava M. Dejoie
Secretary

Enclosures: Potpourri published October 20, 2019
Written comments received from Southeast Louisiana Legal Services

POTPOURRI

Department of Treasury
Board of Trustees of the Teachers' Retirement System

Notice of Public Hearing

The Teachers' Retirement System of Louisiana (TRSL) hereby gives notice of a public hearing pursuant to R.S. 49:953(C)(2)(a) (Act 454 of the 2018 Regular Legislative Session) for the purpose of allowing any interested person the opportunity to comment on any rule of the system, included in LAC Title 58, Retirement, Part III, which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome.

The hearing will take place at 10 a.m., Monday, December 9, 2019 at the Teachers' Retirement System of Louisiana, 8401 United Plaza Boulevard, 4th Floor Boardroom, Baton Rouge, LA.

At the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing, regarding these rules only. TRSL will consider fully all written and oral comments. However, comments must be received in writing in order to be submitted to the legislative oversight committees. Written comments may be submitted in advance of the hearing in compliance with *Louisiana Admin Code*, Title 58, Part III, § 103 to Director, P.O. Box 94123, Baton Rouge, LA 70804-9123. All written comments must be postmarked no later than Wednesday, November 20, 2019 and:

a. clearly state that it is a petition for adoption, amendment or repeal of a rule;

b. state the name, address, telephone number, and e-mail address of its author;

c. be signed and dated by its author;

d. contain a brief description stating:

i. whether the petition is requesting the adoption, amendment or repeal of a rule;

ii. the need for the adoption, amendment or repeal of the proposed rule;

iii. the specific citation of any legal authority purporting to authorize the adoption, amendment or repeal of the proposed rule, if known; and

iv. the fiscal impact of the adoption, amendment or repeal of the proposed rule, if known.

e. state the reasons or grounds for the proposed adoption, amendment or repeal;

f. contain proposed wording, content or description of the suggested language of a newly proposed rule and/or the suggested language of a proposed amendment to an existing rule;

g. a petition for the repeal of an existing rule shall cite the rule to be repealed. The interested person may attach a copy of the rule with a strike through of all portions proposed to be repealed.

h. contain specific citation to any statute that specifically relates to the content of the requested rule change, if known; and

i. include any data, views or arguments in support of the rule's adoption, amendment, or repeal.

Forms for written submissions can be found at https://fluxconsole.com/files/item/202/49900/PARC_final.pdf. To request reasonable accommodations for persons with disabilities, please contact Debbie Boudreaux at 225-925-6530 or debbie.boudreaux@trsl.org, at least 10 business days prior to the scheduled hearing.

Dana L. Vicknair
Director

1910#025

POTPOURRI

Workforce Commission
Office of the Secretary

Notice of Public Hearing

Under the authority of Act 454 of the 2018 Regular Session of the Louisiana Legislature, codified as R.S. 49:953(C)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Workforce Commission "LWC", gives notice that a public hearing will be held at the Louisiana Workforce Commission, 4th Floor Conference Room #494, Administration Bldg., 1001 N. 23rd Street, Baton Rouge, Louisiana, at 9 a.m. on December 20, 2019, for the purpose of receiving comments from all interested persons regarding any Rule of LWC which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. Interested persons are invited to attend the hearing and submit oral comments or submit their written comments at the hearing.

Additionally, all interested persons are invited to submit written comments via the U.S. Mail to Robert Roux, Executive Counsel, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9094. Written comments may also be hand-delivered to Robert Roux, Executive Counsel, 1001 N. 23rd Street, Baton Rouge, LA 70802, and must be date stamped by LWC on the date received. All written public comments must be dated and include the original signature of the person submitting the comments and must be received in an envelope labeled "ACT 454 Comments" no later than 4 p.m. on December 20, 2019. LWC will only consider and review those written comments received at the public hearing or those written comments transmitted and timely received via U.S. Mail or hand delivery during the public comment period. LWC will consider all relevant oral comments received at the public hearing. In order for oral comments to be submitted to the legislative oversight committees, the comments must be submitted in writing as outlined above. Any questions should be directed to Robert Roux, Executive Counsel, at (225) 342-1690.

Any individual who needs special assistance in order to attend or speak at this public hearing should notify Melissa Bayham, Rehabilitation Services Director, at least ten business days prior to the Hearing Date, in writing, at Louisiana Workforce Commission, ATTN: Melissa Bayham, P.O. Box 94094, Baton Rouge, LA 70804-9094, by email at

MBayham@lwc.la.gov or by telephone at (225) 219-2294. The hearing site is accessible to people using wheelchairs or other mobility aids.

Ava M. Dejoie
Secretary

1910#044

POTPOURRI

Workforce Commission
Office of Workers' Compensation Administration

Pain Guidelines—Public Hearing

The Louisiana Workforce Commission (LWC) will hold a hearing to receive public comment from any interested person regarding the Notice of Intent published on September 20, 2019.

Date	Time	Location	Rules Subject to Review
Wednesday, October 30, 2019	9 am	LWC Headquarters 1001 North 23rd Street Baton Rouge, LA 70802 4th Floor Administrative Building	LAC 40:I.Chapter 21 Pain Medical Treatment Guidelines

At the public hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments orally regarding these rules only. The agency will consider fully all written and oral comments.

The hearing site is accessible to people using wheelchairs or other mobility aids. Parking is available on-site.

Sheral Kellar
Assistant Secretary

1910#059

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November 27, 2019

Louisiana Workforce Commission
Attn: Robert Roux, Executive Counsel
P.O. Box 94094
Baton Rouge, LA 70804-9040 Copy by e-mail to rroux@lwc.la.gov

Re: Response to Solicitation of Comments on Agency Rules
Published October 20, 2019, in the Louisiana Register

Dear Mr. Roux:

The following is submitted on behalf of Southeast Louisiana Legal Services ("SLLS") in response to the solicitation of comments on the agency's rules that was published in the October 20, 2019, Louisiana Register. SLLS is a non-profit organization whose mission is to achieve justice for low-income people in Louisiana by enforcing and defending their legal rights through civil legal aid and advocacy. Every year, we have numerous clients seeking unemployment insurance benefits through the Louisiana Workforce Commission ("LWC").

The Hearing Notice published 10/20/19 seeks comments on "any Rule of LWC which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome." The following does not address every single concern we have, but those we consider the most important for your consideration at this time.

101. Office and Officers of the Board of Review.
Currently, this rule does not provide for any qualifications or training whatsoever for Board of Review members, political appointees. This rule needs to include initial training on employment security law and required annual training. By failing to require training upon appointment and thereafter, the agency rule fails to ensure fair hearings and review for claimants.

107. Computation of Time—Saturdays, Sundays and Holidays.
Currently, the wording of this rule is difficult for a lay person to decipher. The agency should consider changing the wording of this rule to make it easier to read and understand. Many unrepresented claimants fail to understand the computation of time and as a result, fail to respond timely. The agency should expand the rule to include a description of the computation of time in all notices. Further, it should list the legal holidays described in the rule and include

the list in notices.

109. Appeals to the Appeals Tribunal and Board of Review.

Current rule does not require the sharing of appeals either on the HIRE account or by any other means. A claimant does not know about ALL evidence submitted by an employer. A claimant is entitled to see evidence submitted by an employer whether it is presented at the hearing or not.

Currently, the only way an opposing party can see the contents of the hearing record is to affirmatively ask for a copy from the agency. Most unrepresented claimants fail to understand the notice of hearing instructions. Claimants should not be disadvantaged or denied due process because they fail to understand the necessity of affirmatively requesting the record. The agency should remedy this issue by automatically sending a copy of the record compiled for hearing, without either party having to ask. When claimants fail to have a copy of the appeal or any exhibits prior to the hearing, the agency fails to protect the right to a fair hearing set forth in La. R.S. 23:1629.

The agency should provide a way to accommodate claimant mistakes with respect to docket numbers or other inadvertent but discernible errors (e.g., claimant's language is clearly appealing one thing, but claimant uses the wrong docket number).

113. Postponements, Continuances, Reopenings, and Rehearings.

Under the current rule, appellants and appellees are not treated equally if a call is missed for a phone hearing. Appellees receive a courtesy call back; appellants do not. If an appellant has a phone connection problem, tries to answer and the call drops, or misses the call and immediately calls back, she is considered to have failed to appear for the hearing and her appeal is dismissed. The appellant then has seven days to request in writing from the date of mailing of the dismissal decision to request a reopening of the appeal. The administrative law judge then decides whether the appellant had good cause for her nonappearance. If the administrative law judge reopens the appeal, then a new hearing must be scheduled. In many cases, this delay and unnecessary rescheduling could be avoided by acknowledging that the phone hearing system is imperfect and both parties should be treated equally.

115. Conduct of Hearing before ALJ.

In addition to §115 (E), polygraph testing results should be added as explicitly non-admissible evidence. They are very difficult to get admitted even in court and the ALJs are not trained to know which few might actually be reliable.

The current rule should be expanded so that when both parties acknowledge receipt of the hearing record sent in advance, the administrative law judge may forego unnecessary reading of the record, and proceed to testimony.

Lastly, the current rule should be expanded to provide that any employer who failed to submit to LWC the Separation Notice required by §323 shall be precluded from participating in an ALJ hearing.

117. Authority to separate Witnesses.
The current rule proposes as an option something which should be a requirement. The rule should be changed so that the administrative law judge must require parties to sequester their witnesses from the hearing call and instruct them not to discuss the case until called back in. Many claimants are unrepresented and do not realize that this is an option. Relying on self-represented claimants to assert this right puts them at a disadvantage in what should be a fair hearing, and prevents Due Process. The separation of witnesses should be automatic.

119. Additional testimony.
The current rule is vague and overbroad and we are not sure that the ALJ has statutory authority anyway to take "additional testimony" after closing a hearing (unless one of the parties has formally requested a rehearing post-ALJ decision). It allows an administrative law judge to unjustly prolong the hearing process on no specific grounds or under any timetable. It is unnecessary for due process as both parties have the option to ask for rehearing under §113. This rule should be deleted entirely so as to prevent misuse.

127. Notification of Appeal.
Currently, this rule only requires that "all applications for appeals shall be acknowledged and the opposing party shall be duly notified." The rule needs to be expanded to ensure Due Process at all stages of the UI claim process. **The agency's notification to the opposing party should always be automatically accompanied by a copy of the complete appeal.** Under current practice, the agency hides the contents of an appeal from the opposing party. At the initial claim stage, the agency never shares the employer's protest with a claimant. At the stage of an appeal leading to a phone hearing, the only way an opposing party can see the contents of the appeal is to affirmatively request a copy of the record from the agency (see comments above, re: rule #109); most unrepresented claimants fail to understand the notice of hearing instructions that mention this opportunity and as a result, fail to have a copy of the appeal or any exhibits prior to the hearing, which leads to the agency failing to effectively implement the statutory right to fair hearing set forth in La. R.S. 23:1629. At the stage of an appeal leading to the Board of Review, there is no established or publicized method for the opposing party to obtain a copy of the appeal; at that stage, it is not uncommon for the losing party to send to the Board of Review evidence that it failed to present at the hearing, and the Board of Review does not provide a copy of that new evidence to the opposing party, and the opposing party may only find out about it on receiving a Board of Review decision. By failing to require full disclosure of the appeal contents to the opposing party, the agency rule fails to effectively implement the right to review by the Board of Review as set forth in La. R.S. 23:1630.

129. Decision of the Board.
Currently, agency rule fails to require the Board to follow any particular procedure in its review, and fails to require it to notify the parties of how it conducted its review. SLLS has recently seen evidence that the Board uses the services of a staff employee to listen to the hearing recording, read the written exhibits, and present an analysis and recommended decision to the Board. Given this evidence, the quantity of appeals, and the extreme rapidity in which the

Board sometimes issues decisions, it is extremely doubtful that the Board members actually read the record and listen to the hearing recordings of every appeal before it. Pretermitting for now the issue of this practice's legality given the Board's statutory obligations under La. R.S. 23:1630, agency rule should clearly set forth in what manner the Board is conducting its review. If the agency believes that it is legal for the Board to delegate its review function, and rely on a mere summary from that person, it should by rule set forth that procedure, AND automatically provide to both parties a copy of that delegate's report prior to the Board decision. This is necessary to ensure Due Process.

131. Issuance of Subpoenas.
Current rule fails to provide for immediate copying to the opposing party of the notice of the subpoena request. This lack should be corrected, to ensure Due Process.

135. Disqualification of Representative.
Current rule fails to specify any procedure whereby an administrative law judge or the Board "may refuse to allow" a representative. We question the legal authority for the rule, particularly as it may impact a claimant's choice of a duly-licensed attorney, and suggest you consider its elimination. Pretermitting the issue of legality, however, should the agency retain the rule, to avoid possible abuse in the future and to ensure Due Process of law, it should be invoked only where a representative has already been disqualified through a procedure that includes contradictory hearing and review.

303. Training of Administrative Law Judges.
Under the current rule, only "newly-hired" administrative law judges are given any training. There is also no training required by the agency for Board of Review members, which is deplorable. For both adjudication level participants, there should be required annual training in addition to training on hire. We have also been informed that administrative law judges are not even informed internally by the agency when they are reversed by the Board or by a court of law (unless the case is remanded for a new hearing). This – combined with the lack of ongoing training – indicates a lack of supervision that should be corrected.

313. Records.
This rule is a good point at which to raise the **agency's serious deficiencies in how it addresses worker misclassification by employers and resulting problems that UI claimants have on receipt of Monetary Determinations that fail to include what should be employment income.** This agency is well aware of the rampant abuse by employers in this area, and the agency clearly does not do enough to protect the interests of UI claimants. *All agency rules should be examined for possible amendments to address this serious issue.* This particular rule, for example, requires employers to establish "employment" records but should clearly require records EVEN IF the employing unit considers the worker an independent contractor. That type of classification should be promptly investigated by the agency, and the earnings of misclassified workers counted at the front end, so that they do not face the unjust delays and denials of their UI claims at a later job separation.

The unjust effect on UI claimants is highlighted by the fact that the agency has no rule at all to

implement La. R.S. 23:1624 (Monetary determination and notice of claim). Our clients' experience now under current agency practice is that when a monetary determination does not include earnings she believes were received as an employee, the appeal acknowledgement of a request for redetermination is shown on HIRE but she is given no timetable, and the agency seems to literally have none, for the completion of its investigation; she cannot see any communication on the investigation whatsoever (even her own, much less the communications between the agency and the employer); she is precluded by the agency from filing weekly UI claims for benefits during the investigation; and when that investigation is completed, she receives no notice of determination or opportunity for further review; and no information from the agency about her other legal remedies for the misclassification. Clearly, on the misclassification issue the agency desperately needs appropriate procedures established by rule to implement the remedial purpose of the Louisiana Employment Security Law, and to ensure Due Process.

317. Employer Registration When Required.
This is another rule where the agency needs to do more to address the rampant misclassification abuse by employing units in the State of Louisiana. Subsection C of this current rule mentions the agency's authority to "determine" whether the employing unit is an employer for UI purposes and whether the persons to whom wages are paid are employees for the same purpose, but that rule only mentions LWC authority after an employing unit decides to register and set forth no investigation process or timeline, no opportunity for worker input, and no consequences on the employer for misclassification. The only other rule is #375, which just echoes judicial pronouncements on the factors to consider in Determining Whether Workers Are Employees or Independent Contractors; there is no rule outlining a process or giving the claimant any information on the process or giving the claimant any determination notice right at all, or requiring the LWC to inform the workers of how the alleged misclassification affects them in other areas (e.g. tax liability) or what to do about it, either inside or outside of the UI context.

323. Separation Notices.
The agency should implement the remedial purpose of the State's UI law by setting out a concrete consequence for employers who protest a UI claim but who failed to timely submit a Separation Notice to the agency. These employers should be barred from appealing an agency determination that allows UI benefits to a claimant, and in the instance of a claimant's appeal of a disqualifying separation determination, the employer should be barred from presenting adverse testimony or other evidence.

324. Reply to Notice of Eligibility.
If this current rule is still needed in light of La. R.S. 23:1625.1, it should be amended to better reflect that statute (for example, the insertion of the word "timely" or phrase 'within the time period provided by statute").

351. Benefit Determination Notice.
Current rule is fine as worded, but beyond using the phrase "state clearly," fails to address the critical issue of *content readability*. Agency determination notices are extremely confusing to

the typical lay person using the Louisiana UI claim system, and seem to be written for college-level or even higher readers. We do not know of any user testing ever done by the agency. The agency has never consulted the major providers of legal services to UI claimants in the state, who have offered feedback, and have in fact refused offers to consult on planned notice revisions. The agency should incorporate the principles of Plain English and appropriate user testing into its rules on benefit determination notice.

368. Disqualification for Benefits Pursuant to R.S. 23:1601(8)(a)

The seven days to respond is not seen in statute and is contrary to the remedial purpose of the Louisiana Employment Security Law; the seven days should be increased to the commonly-used fifteen day time period.

369. Waiver of Overpayment Recovery.

Current rule denies waiver if claimant "fails to return the completed questionnaire timely" – there's no exception, which is not required by statutory mandate and which violates the remedial purpose of our state's UI system. There should be an exception for good cause, and if the claimant testifies to having timely sent it in by a method approved by the agency which does not automatically create a receipt or proof of sending, the administrative law judge should be required to go through the waiver questions in the hearing itself.

371. Overpayment Recovery.

The agency often identifies overpayments years after the initial claim, and then sends notice to an address from years before, allowing only 15 days for it to reach the claimant and get a response. The rule by omission allows agency practice that seems purposely designed to result in finalized debts without adequate notice and opportunity to appeal. The agency should amend its rules to better implement the remedial purpose of the Louisiana Employment Security Law, and to ensure Due Process. Specifically, the rule should require that notices of overpayment be sent by certified mail, return receipt required, and the running of the appeal period from receipt of notice prior to finalization of an alleged overpaid benefits debt.

We at SLLS thank you for the opportunity to submit these comments. Do not hesitate to contact us if you have any questions or concerns.

Sincerely,

Rowena Jones
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