

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #8

Do Not Mark In This Box
Filing Date

2010 SEP 28 PM 2:00



Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: WorkForce West Virginia TITLE NUMBER: 96

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 31, 2009

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: September 28, 2010

SERIES NUMBER OF RULE: 3

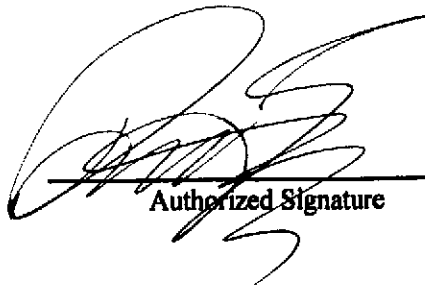
TITLE OF RULE: Rule for Employer Violator System

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

West Virginia Code §21A-1-4(d) makes it mandatory that the Executive Director of WorkForce West Virginia propose emergency rules to effectuate the above subsection of West Virginia Code.

Use additional sheets if necessary


Authorized Signature

SUMMARY OF FACTS AND CIRCUMSTANCES

West Virginia Code § 21A-1-4(d) passed April 11, 2009 and in effect from passage mandates an emergency rule to effectuate this subsection. The emergency rule mandates how the Executive Director of WorkForce West Virginia establishes an employer violator system or list to identify for the public and other state agencies individuals and employers who are in default on any assessment, surcharge, tax or penalty owed to the unemployment compensation fund. It also establishes due process rights for individuals and employers who are incorrectly placed on the employer violator list.

EMERGENCY RULE QUESTIONNAIRE

DATE: September 28, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WorkForce West Virginia
112 California Avenue, Charleston, West Virginia 25305
Attention: Mary Blaine McLaughlin, Senior Counsel Phone: (304) 558-3403

EMERGENCY RULE TITLE: Rule for Employer Violator System

1. Date of filing September 28, 2010

2. Statutory authority for promulgating emergency rule:
§21A-1-4(d) of the West Virginia Code

3. Date of filing of proposed legislative rule: July 31, 2009

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? amends 96 CSR 3

5. Has the same or similar emergency rule previously been filed and expired?
Yes

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
Mandated by statute, West Virginia Code §21A-1-4(d), to be filed by emergency rule

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code §21-A-1-4(d) passed April 11, 2009 in effect from passage

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Mandated by statute, West Virginia Code §21A-1-4(d)

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: _____
Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural
Agency: WorkForce West Virginia
Address: 112 California Avenue
Charleston, West Virginia 25305
Attention: Mary Blaine McLaughlin, Senior Counsel
Phone Number: (304) 558-3403 Email: mary.b.mclaughlin@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

There will be costs to set up the website, and at this time, we do not know how much those costs will be.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____ Title 96

Rule Title:

Rule for Employer Violator System Title 96

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Additional costs will be that of creating and maintaining the Employer Violator Website. At this time there is no estimated cost projection. Currently, staff is working on the collection of delinquent accounts. A small expense may be incurred for any hearings held. However, based on past experience we do not feel many hearings will be requested. Additionally, we anticipate that any costs incurred as a result of the rule will be offset by additional amounts collected from employers in default.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This agency has no information on how much control or interest an employer has in a company and the Executive Director has no such statutory authority to define such interest or control of an employer. Wherefore, this condition can not be effectuated in the statute by this rule as a condition of preventing an employer from obtaining a license, certificate or permit.

Date: September 28, 2010

Signature of Agency Head or Authorized Representative



96 CSR 3

2016 SEP 28 PM 2:00

LEGISLATIVE RULE

WORKFORCE WEST VIRGINIA

SERIES 3

RULE FOR EMPLOYER VIOLATOR SYSTEM

§96-3-1. General.

1.1. Scope. -- This legislative rule is intended to set forth the procedures enabling the implementation of the provisions of West Virginia Code §21A-1-4(d) that establishes an employer violator system to identify individuals and employers who are in default on any assessment, surcharge, tax, or penalty owed to the unemployment compensation trust fund.

1.2. Authority. -- West Virginia Code §21A-1-4(d), §21A-2-6(17), and 96CSR1 Rule Implementing the Requirement that Prohibits Agencies from Granting, Issuing or Renewing Contracts, Licenses, Permits, Certificates or Other Authority to Conduct a Trade, Profession or Business to or with any Employing Unit who is in Default with Regards to Unemployment Compensation. Emergency Legislative Rule requirements of West Virginia Code §29A-3-1 et seq, must be followed pursuant to the Acts of the Legislature, 3rd Executive Session, 1988, §29A-3A-16.

1.3. Filing date. --

1.4. Effective date. --

§96-1-2. §96-3-2. Definitions.

The following terms and words have the meanings stated, unless the context clearly indicates otherwise.

~~2.1. "Agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations.~~

~~2.2.~~ 2.1. "Code" means the West Virginia Code of 1931 as amended.

~~2.3.~~ 2.2. "Default" for purposes of the administration of chapter twenty-one-a of the Code means that an employer is in default when, after due notice, the employer fails to submit a required payment, interest thereon, or penalty, and has not entered into a properly executed repayment agreement with WorkForce West Virginia or has entered into an appropriate repayment agreement, but does not remain in compliance with its obligations under the repayment agreement. For purposes of this rule, an employer who

has failed to submit required payments, interest or penalties, or required quarterly reports by the required due dates is presumed to be in default.

2.4. ~~2.3.~~ "Division" means the division of unemployment compensation within WorkForce West Virginia.

2.5. ~~2.4.~~ "Employer" includes any individual or type of organization as defined in §21A-1A-14 of the West Virginia Code which has in its employ one or more individuals performing service within this State.

2.6. ~~2.5.~~ "Employer Violator List" includes any employer as defined above which has a lien filed against them by WorkForce West Virginia due to his or her default on any assessment, surcharge, tax or penalty owed to the unemployment compensation trust fund. Information on the violator list includes the business name (also includes the doing business as and trading as name), as well as the city and state where the business is located. Employers not on the list include employers either in bankruptcy or on a repayment plan.

2.7. ~~2.6.~~ "Executive Director" means the Commissioner of WorkForce West Virginia pursuant to West Virginia Code §21A-1-4(b).

2.8. ~~"Employing unit" means an individual, or type of organization, including, any partnership, association, trust, estate, joint stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (B), subdivision (9) [§21A-1A-17(9)(B)] of the definition of "employment" in this article, institution of higher education, or that receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has in its employ one or more individuals performing service within this state. The presumptions of ownership or control contained in the Division of Environmental Protection's Surface Mining Reclamation Regulations promulgated under the provisions of §22-3-1 of the West Virginia Code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision.~~

2.9. ~~2.7.~~ "Fund" means the unemployment compensation trust fund.

3.0. ~~"Grant" and "Issue" include not only the original issuance or granting of an approval document but also any transfer, assignment or sale of the document, if otherwise, allowed.~~

3.1. ~~2.8.~~ "Hearing" as defined in 96, CSR 2, Rule for Administrative Hearings is an agency proceeding before an administrative law judge or hearing examiner with definite issues of fact or law to be tried and to which parties have the right to be heard.

3.2. "License" is a document or permit certified which the employer must obtain in order for him or her to do business (ie. contractor's license, law license, doctor's license, timbering permit)

3.3. "List" means a paper or database identification of an employing unit that is in default with WorkForce West Virginia. The list, which will be created by WorkForce West Virginia may be provided to the agency in the form of either a computerized database or other databases that the agency can access.

3.4. "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or county; any governmental agency; political subdivision; county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group or persons or individuals acting individually or as a group or any other legal entity whatever.

3.5. ~~2.9.~~ "Repayment agreement" means a written agreement to pay in full all delinquent amounts owed to the Agency, including interest and penalties, under the provisions of chapter twenty-one-a of the Code, but does not include repayment agreements entered into prior to the effective date of this rule, unless the agreement is modified to include the provisions required in this definition.

3.6. "Review" means either to query a computerized database or list to determine if the applicant's name included is in default with the Executive Director with regard to the administration of Chapter twenty-one-a of the Code.

3.7. ~~2.10.~~ "WorkForce West Virginia" is the West Virginia Bureau of Employment Programs pursuant to §21A-1-4(b) of the West Virginia Code.

~~§96-1-3.~~ §96-3-3. General Prohibition.

Pursuant to the provision of West Virginia Code §21A-1-4(d), ~~an agency may not grant, issue or renew any permit license or certification with an employer who is in default on any assessment, surcharge, tax or penalty owed to the unemployment compensation fund until such employer has paid back all moneys owed to the fund or has entered into or remains in compliance with a repayment agreement. the employer~~ Violator System shall prohibit violators who own or have a ten percent or more ownership interest from maintaining any license, certificate or permit issued by the state, until the violator has paid all monies owed to the fund or has entered into or remains in compliance with a repayment agreement.

~~§96-1-4.~~ §96-3-4. Compilation and Storage of Employer Violator List.

The Employer Violator List will be compiled and stored on the unemployment compensation automated tax system. The Employer Violator List will be updated weekly by matching data retained on the automated tax system.

§96-1-5. §96-3-5. Access to the Employer Violator System.

Access by the public will be on the WorkForce West Virginia website:
www.workforcwestvirginia.org.

§96-1-5. Timing of Review of License or Permit.

~~5.1. After an application is complete and no further changes may be made to it prior to its final approval and before it is issued, an agency shall review the list. This does not prevent a review prior to that time and notifying the applicant of the results.~~

~~5.2. If the applicant's name appears as being in default, an agency shall notify the applicant in writing, as in their normal course of business, that the agency has been informed that the applicant is in default with the Executive Director with regard to the administration of chapter twenty one-a of the Code and that the approval document can not be issued until the applicant is no longer in default. A copy of the notice shall be sent to the Executive Director addressed as follows:~~

Director of Unemployment Compensation
WorkForce West Virginia
Unemployment Compensation
112 California Avenue
Charleston, West Virginia 25305

~~5.3. If the approval document is not issued, granted or renewed within fourteen calendar days of the review that caused notice to be given to the applicant under subsection 4.2 of this section, a new review shall be conducted.~~

~~5.4. If the applicant disagrees with WorkForce West Virginia's decision of placing his name on the default list, he may request a hearing under 96CSR2.~~

§96-1-6 §96-3-6. Employer Placed on Violator List; Notice.

6.1 When an An employer who is in default on any assessment, surcharge, tax, or penalty to with the Unemployment Compensation Division of WorkForce West Virginia fund, has a lien filed against its property, its name will shall be placed in the employer violator system and only removed from the list when the lien is paid in full system pursuant to section seven of this rule. This list is available to the public.

6.2 Prior to being placed in the employer violator system, the employer shall be notified by mail that the Director has identified the employer as being in default and as a result, intends to include the employer in the employer violator system. The notice of the Director's intent to include the default employer in the employer violator system shall include the following information:

- a. The employer may avoid being included in the employer violator system by paying all moneys owed to the fund or entering into a repayment agreement within 10 days of the date of the notice.
- b. The employer may object to being included in the employer violator system and request, in writing, an expedited administrative hearing pursuant to section eight of this rule
- c. The request for an expedited administrative hearing must be postmarked on or before the tenth day after the date of the Director's notice and must be mailed to the following address:

Director of Unemployment Compensation
Workforce West Virginia
Unemployment Compensation
112 California Avenue
Charleston, WV 25305

6.3 An employer who fails to respond within 10 days of the date of the notice of the Director's intent to include the employer in the employer violator system, by

- a. paying all moneys owed to the fund;
 - b. entering into a repayment agreement, or
 - c. requesting, in writing an expedited administrative hearing,
- shall be included in the employer violator system and shall remain in the system until removed pursuant to section seven of this rule.

§96-1-6. Revocation.

~~6.1. Pursuant to the provisions of W. Va. Code §21A-1-4(d), an agency shall revoke any approval document of any employing unit whose account is in default with the Executive Director at the time the license, permit, contract, certificate or other authority is renewed.~~

~~6.2. If WorkForce West Virginia has reason to believe that an employing unit that is in default is conducting its business pursuant to an approval document with an agency, WorkForce West Virginia shall notify the agency to revoke the approval documents.~~

~~6.3. If the agency determines that the employing unit, that is the subject of the notification in subsection 5.2., is conducting its business pursuant to an approval document issued by the agency, the agency shall notify the employing unit in writing, as in their normal course of business, that the agency has been notified that the employing unit is in default with WorkForce West Virginia under the provisions of chapter twenty-one a of the Code and that the approval document must be revoked. The agency will have 90 days from the date of notification from WorkForce West Virginia to revoke the employing unit's license or until the employing unit is no longer in default. A copy of the notice shall be sent to WorkForce West Virginia addressed as follows:~~

Director of Unemployment Compensation Division
WorkForce West Virginia
112 California Avenue
Charleston, West Virginia 25303

96-1-7. §96-3-7. Removal of the Employer's Name from the Violator List

The employer's name will be removed from the violator list when the amount on the lien owed to WorkForce West Virginia is paid in full or the employer enters into an approved repayment agreement.

§96-1-7. Conditional Issue.

~~An approval document shall be conditionally issued or conditionally restored if revoked, if the applicant has entered into a repayment agreement with WorkForce West Virginia for payment in full of all payments, interests and penalties owed. If the applicant does not maintain continued compliance with the repayment agreement, WorkForce West Virginia shall notify the agency that the applicant is in noncompliance. Upon receiving the notice, an agency shall rescind the approval document.~~

§96-1-8. Request for Review.

~~When an employing unit's contract, license, permit, certificate or other authority is revoked or not issued or renewed due to its unemployment compensation account being in default with WorkForce and its name appearing on the employer violator list, the employing unit in default may request a review of the decision from the Director of the Unemployment Compensation Division at the address that follows.~~

Director of Unemployment Compensation Division
WorkForce West Virginia
112 California Avenue
Charleston, West Virginia 25305

§96-1-8. §96-3-8. Hearing.

6.1. Pursuant to the provisions of W. Va. Code §21A-1-4(d), and Code of State Rules, title 96-CSR series 2, an An employer who has protested files with the Director a written objection to their name being placed on the employer violator system list shall be afforded an opportunity to contest the Director's determination that the employer is in default on any assessment, surcharge, tax, or penalty to

the Unemployment Compensation Division of WorkForce West Virginia fund and the opportunity to present testimony and enter evidence in support of its position.

6.2. The hearing shall be conducted in accordance with the administrative hearings provisions of 96 CSR 2 have an expedited hearing within 2 to 3 weeks after their

request. However, notwithstanding time requirements for notice and hearing contained in §96 CSR 2, the following time requirements shall govern the expedited administrative hearings held pursuant to this rule:

6.2.a. An expedited administrative hearing shall be held within 20 days of an employer's timely request for a hearing.

6.2.b. Evidence from any party must be submitted to the hearing examiner before, or at, the administrative hearing.

6.2.c. Hearings shall not be continued except by agreement of the parties or upon the most compelling of good cause. Good cause determinations will be strictly resolved in view of the legislative mandate to expedite the resolution of the issue.

6.2.d. The hearing officer shall issue a decision within thirty (30) days of the date of the administrative hearing.

§96-1-9. Severability.

~~If any provisions of this rule or the application thereof to any entity or circumstance is held invalid, such invalidity does not affect the provisions or the applications of this rule which can be given affect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.~~