

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

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: WorkForce West Virginia TITLE NUMBER: 96

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 3

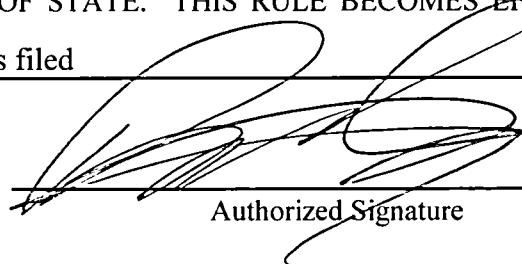
TITLE OF RULE BEING PROPOSED: Rule for Employers Violator System

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2626

SECTION 64-10-1, PASSED ON March 9, 2011

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: the same date the rule is filed Apr. 13, 2011


Authorized Signature

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OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

96 CSR 3

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 96 CSR1 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. --

§96-3-2. Definitions.

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

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

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.

2.3. “Division” means the division of unemployment compensation within WorkForce West Virginia.

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.

2.5. “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.

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

2.7. “Fund” means the unemployment compensation trust fund.

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.

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.

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

§96-3-3. General Prohibition.

Pursuant to the provision of West Virginia Code §21A-1-4(d), 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.

§96-3-4. 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.

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

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

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

6.1 An employer who is in default on any assessment, surcharge, tax, or penalty to the fund, shall be placed in the employer violator system and only removed from the system pursuant to section seven of this rule.

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.

§96-3-7. 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.

§96-3-8. Hearing.

6.1. An employer who files with the Director a written objection to their name being placed on the employer violator system 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. 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.