

Filing an Unemployment Appeal

The purpose of this packet is to help unemployment-benefits applicants file an appeal without an attorney. Staff from the Clerk of the Appellate Courts office can answer basic questions, but they cannot fill out the forms or give legal advice.

There are three parts to this packet: (1) an explanation of the appeal process; (2) a checklist; and (3) the forms you need for the appeal.

Court of Appeals Opinions are Available to the Public

Once your appeal is decided, this court's opinion will be available to the public on the Minnesota Judicial Branch's website. **After an opinion is filed, it cannot be removed from the Internet.** This means that anyone who searches for your name on the Internet may be able to find and read the opinion.

Explanation of the Appeal Process

These materials are important if you wish to appeal a final decision of the unemployment law judge (ULJ) regarding a claim for unemployment benefits. The ULJ's order *ruling on a request for reconsideration* is the final decision. You cannot appeal the ULJ's initial decision unless a timely request for reconsideration was made and the ULJ issued a final decision on reconsideration.

If you are or will be represented by an attorney, please give this material to the attorney.

If you will be handling the appeal yourself, please read this material carefully. It includes copies of the forms you need.

The Parties

You, as the appealing party, are called the "relator." The other parties are called the "respondents." The respondents are:

- (1) the employer (if any), and
- (2) the Department of Employment and Economic Development (the department)

Minnesota Rules of Civil Appellate Procedure

These rules apply to all appeals. While we have given you a simplified version of what you need to do, you should read the rules yourself for more information. You can find these rules at the Minnesota State Law Library, Room G25, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN

55155 (651-296-2775), at public libraries, and at the Minnesota Judicial Branch's website: www.mncourts.gov

Here is more information about some of the terms we use.

Filing

"Filing" means giving documents to the office of the clerk of appellate courts. You may file documents by hand-delivering them to the clerk's office or by placing the documents in the United States mail, first-class postage prepaid, within the time required to file the document. Filing by facsimile (fax) or other electronic means currently is not allowed unless authorized by an order of the Minnesota Supreme Court. The appellate courts are in the process of changing to an electronic filing system, but presently you must still file by mail or in person.

If you do not file the petition for the writ of certiorari within 33 days after the ULJ's decision on reconsideration was mailed, or within 30 days after the decision was sent to you by electronic transmission, your appeal will be dismissed. This time cannot be extended.

Service

You must give a copy of all appeal papers to all respondents (usually the employer and the department) either personally or by mail. This is called "service." Service by mail is made by depositing the papers in the United States mail, first-class postage prepaid, within the appeal period. If you decide to have the papers served personally, this may be done by the sheriff or another person 18 years or older who is not a party to the appeal. Because you are a party to the appeal, **you may not personally serve the papers on a respondent who does not have an attorney. If a respondent has an attorney, you may personally serve the attorney.**

The petition for the writ of certiorari must be served on the department (either the ULJ or the Commissioner of Employment and Economic Development), and on the employer. If you do not serve the petition for the writ of certiorari on all of the respondents within 33 days after the ULJ's decision was mailed, or within 30 days after the decision was sent to you by electronic transmission, your appeal will be dismissed. This time cannot be extended.

At this time, service by facsimile (fax) or other electronic means is allowed only with the consent of the party to be served and it is effective upon receipt.

Time Periods

You have 30 days to appeal from the time the ULJ's decision on reconsideration was *sent* to you. If the ULJ's decision was mailed to you, you have an extra three days to appeal. If the ULJ's decision was sent to you by electronic transmission, then you do not get the extra three days for mailing.

To figure out when the period of time to file and serve a document ends, apply the following rules. When you start counting the days, do not count the day that the event occurred that started the time period, but start counting the next day. For example, if the decision was mailed to you, the day after the ULJ's decision was mailed to you is the first day of your 33-day appeal period. If the decision was sent by electronic transmission, the day after the decision was transmitted is the first day of the 30-day appeal period. Continue counting calendar days. Do not skip weekends or legal holidays. If the last day of the period falls on a Saturday, Sunday, or legal holiday, then the deadline is the next business day.

Legal holidays for the appellate courts are New Year's Day (January 1); Martin Luther King, Jr.'s birthday (the third Monday in January); Presidents' Day (the third Monday in February); Memorial Day (the last Monday in May); Independence Day (July 4); Labor Day (the first Monday in September); Veterans' Day (November 11); Thanksgiving Day (the fourth Thursday in November); the Friday after Thanksgiving; and Christmas Day (December 25).

The appellate courts are open on Christopher Columbus Day, which falls on the second Monday in October. However, Christopher Columbus Day is a legal holiday for the purpose of determining a time period. If the last day of the period falls on Christopher Columbus Day, then the period is extended until the next day.

Affidavit of Service

You must file proof with the Clerk of the Appellate Courts showing that you have served the appeal papers and briefs on respondents. This can be done by filing a completed affidavit of service. (This form is at the back of this packet.) You must complete this form and have it notarized. The Clerk of the Appellate Courts can notarize the affidavit at no charge, but you must appear personally at the office and sign the affidavit at that time. Most banks also have a notary who can notarize it for a small fee. An affidavit is required for **every** document you file with the court, to prove that you have given copies to all the other respondents. You may file one affidavit listing multiple documents if you serve those documents on the same date and on the same parties. We have given you copies of these forms, but you may still need to make extra copies.

Filing Fees

An applicant appealing the denial of unemployment benefits does not have to pay a filing fee. Minn. Stat. § 268.105, subds. 6(b), 7(c).

Petition for Writ of Certiorari, Writ of Certiorari, and Statement of the Case

A copy of each form you need to fill out for this appeal is at the back of the packet. You must file these with the Clerk of the Appellate Courts and serve them on all of the respondents (the department and, usually, the employer) within the time to appeal. The petition for a writ of certiorari tells the court and the respondents that you want to appeal the ULJ's decision.

The writ of certiorari is a form that the clerk's office will sign and give back to you; once signed, it is called an "issued writ." You will serve the issued writ on all of the respondents. The writ tells the department to send your records to the Clerk of the Appellate Courts so that the court of appeals can review them for the appeal.

The statement of the case is a form in which you give us information about your case and you briefly explain why you think the decision by the ULJ is wrong.

The Record

The record that the court of appeals will look at is the evidence used in the hearing before the ULJ and any new evidence on reconsideration, if you asked for a new hearing. The department will send the record to the court of appeals. You may not give new evidence on appeal without first getting permission from the court of appeals. The court of appeals generally does not accept new evidence.

If testimony was given at the hearing, the department will prepare a transcript of the audiotape of the hearing free of charge. A transcript is a typed copy of what all of the parties and the ULJ said at your hearing. If you request it, the department will also send you a copy of all exhibits introduced into evidence without charge.

Briefs

The brief is your written argument on appeal. You must file five copies of the brief with the Clerk of the Appellate Courts, and serve two copies on each of the respondents. See Minn. R. Civ. App. P. 131.03. You must also file proof of service for the brief. (See "Service" above.)

The department will prepare an itemized list of the contents of the record, which may include a transcript of the hearing before the ULJ. The department is required to serve on all parties the itemized list of the contents of the record within 30 days after service of the petition for certiorari (the appeal papers) or 14 days after delivery of the transcript, whichever is later. Your brief is due within 30 days after the department serves the itemized list of the contents of the record on you. If the department serves the itemized list by mail, then you have 33 days after the date that the list was mailed to serve and file your brief. See Minn. R. Civ. App. P. 115.04, subd. 4.

As the relator (appealing party), you must file a brief, or your appeal will be dismissed. See Minn. R. Civ. App. P. 142.02. You may file either a formal or an informal brief, or you may use a memorandum of law that you gave to the ULJ with a short letter argument. Most applicants for benefits file informal briefs.

A formal brief includes a table of contents, a statement of the legal issues, a statement of the case and the facts, an argument, a conclusion, and an addendum. See Minn. R. Civ. App. P. 128.02. A formal brief must be bound. See Minn. R. Civ. App. P. 132.01 (includes the supreme court's order regarding acceptable types of binding).

An informal brief may be stapled and must include a written argument and addendum. See Minn. R. Civ. App. P. 128.01, subd. 1.

If you gave a written memorandum of law to the ULJ, you may file as your brief that memorandum to the ULJ *and* a short letter argument that addresses the ULJ's decision. This may be stapled and must include an addendum. See Minn. R. Civ. App. P. 128.01, subd. 2.

Regardless of the type of brief you file, you must include an addendum to your brief that contains a copy of the ULJ's decision that you are appealing. See Minn. R. Civ. App. P. 130.02.

Time Extensions or Other Requests (Motions)

If you cannot serve and file your brief within 30 days and you need more time, or if you want any other relief from the court, you must serve and file a signed, written motion asking the court for the relief you need. Your motion should be made before the deadline you wish to extend. The requirements for a motion are found in Minn. R. Civ. App. P. 127. The motion must state the relief requested and your reasons for the request. You must serve the written motion on the department and the employer and file an affidavit of service for the motion. **Caution: As previously stated, the court of appeals cannot extend the time to serve and file the petition for writ of certiorari.**

How Your Case Will be Decided

After the parties have filed their briefs, your appeal will be submitted to a panel of the court of appeals consisting of three judges. If you are not represented by an attorney, the court of appeals will not allow oral argument by any party. See Minn. App. Spec. R. Pract. 2. You will receive notice of the date of oral argument or nonoral consideration by the panel, and the names of the judges assigned to decide your case.

The court of appeals will issue a written decision within 90 days after the appeal is considered by the judges. You then have 30 days to file a petition requesting review by the Minnesota Supreme Court. See Minn. R. Civ. App. P. 117.

The mailing address, phone number, and work hours for the clerk's office are:

Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, MN 55155
(651) 296-2581
8:00-4:30 Monday - Friday
Web address: www.mncourts.gov

Checklist

These are the steps that you must follow to begin your appeal. Please follow the directions exactly. If you do not do so, you may miss an important step and you could lose your opportunity to appeal.

1. **First, fill out the following forms, filling in all the blanks.** We have given you a copy of each of these forms. If you do not fill out all the blanks, we may have to send the forms back to you and it might then be too late for you to appeal.

_____ Petition for writ of certiorari
(This is the form that tells us that you want to appeal)

_____ Writ of certiorari
(This is the form that the clerk or an assistant will sign and give back to you)

_____ Statement of the case
(This is just an outline of your case that **summarizes** the reasons why you think the decision by the ULJ was wrong. You can make detailed arguments in the brief that you will file with this court later. It is not necessary to attach any other documents to this form. If you want, you can include documents that are already part of the record in the addendum to your brief.)

2. **Next, you must file with the Clerk of the Appellate Courts the following completed forms within 33 days after the date the ULJ's decision on reconsideration was mailed to you, or within 30 days after the ULJ's decision was sent by electronic transmission.** "Filing" means that you must mail or hand-deliver these documents to the Clerk of the Appellate Courts, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Suite 305, St. Paul, MN 55155. **If you do not file the petition for writ of certiorari within 33 days after the ULJ's decision on reconsideration was mailed, or within 30 days after the decision was sent by electronic transmission, your appeal will be dismissed.**

_____ Petition for writ of certiorari

_____ Writ of certiorari

_____ One signed statement of the case

_____ A copy of the ULJ's decision that you are appealing

3. **In addition, you must serve the following on all respondents within 33 days after the ULJ's decision on reconsideration was mailed to you, or within 30 days after the decision was sent to you by electronic transmission.** "Serving" means that you must mail these papers or have them given in person to the respondents. **If you do not serve the petition for the writ of certiorari within 33 days after the date the ULJ's decision on reconsideration was mailed to you, or within 30 days after the decision was sent to you by electronic**

transmission, your appeal will be dismissed. The respondents are the Department of Employment and Economic Development *and* the employer.

Serve the department (either the ULJ or the commissioner) with the following forms at the following address:

The Department of Employment and Economic Development
E-200 First National Bank Building
332 Minnesota Street
St. Paul MN 55101

_____ A copy of the petition for writ of certiorari

_____ A copy of the unsigned writ of certiorari

_____ A copy of the statement of the case

_____ A copy of the ULJ's decision that you are appealing

Serve the employer as described below with the following forms:

If the employer has an attorney, you must serve the attorney, either by mail or personally. If the employer does not have an attorney, you must serve the employer. You can do so by mail, but you cannot personally hand deliver the documents to the employer. If you decide to have the documents hand-delivered, rather than mailed, you must have the sheriff or a person 18 years or older serve them.

_____ A copy of the petition for writ of certiorari

_____ A copy of the unsigned writ of certiorari

_____ A copy of the statement of the case

_____ A copy of the ULJ's decision that you are appealing

4. **After serving the documents listed in step 3, you must promptly file affidavits of service with the Clerk of the Appellate Courts for all documents.** An affidavit of service is a sworn, notarized statement saying that you served the documents. This packet includes an affidavit you can use if you serve these documents on the same date and on the same parties, but you may need to make extra copies if you don't do so. The clerk's office can notarize the affidavit of service at no charge. Most banks also have a notary who can notarize the affidavit of service for you for a small charge.

File affidavits of service to prove that you have served the department and the employer with the petition for the writ, the unsigned writ of certiorari, the statement of the case, and a copy of the ULJ's decision that you are appealing on the following respondents:

_____ The Department of Employment and Economic Development

_____ The employer

5. **After you file your papers with Clerk of the Appellate Courts, the clerk or an assistant will sign the writ of certiorari that you gave us. Once the clerk's office signs the writ, it is considered "issued." They will then give you copies of the issued writ. You must then also serve a copy of the issued writ on the following respondents:**

_____ The Department of Employment and Economic Development

_____ The employer

You must also file an affidavit of service with the Clerk of the Appellate Courts to prove that you have served the issued writ on the department and the employer. This packet includes an affidavit you can use if you serve this document on the same date and on the same parties, but you may need to make extra copies if you don't do so.

6. **Your next step is to file and serve a brief.** A brief is a written argument explaining why you believe the decision by the ULJ was wrong.

If testimony was given at the hearing before the ULJ, the department will mail you a copy of the transcript of your hearing. A transcript is a typed copy of what all of the parties and the ULJ said at your hearing.

The department will send you an itemized list of the contents of the department's record. Your brief is due within 30 days after the department sends you the itemized list. If the department sends the list by mail, then your brief is due 33 days after the date that the list was mailed.

_____ File **five** copies of your brief with the Clerk of the Appellate Courts Office.

_____ Serve **two** copies of your brief on the Department of Employment and Economic Development.

_____ Serve **two** copies of your brief on the employer (if it does not have an attorney), or on the employer's attorney.

You must also file an affidavit of service with the Clerk of the Appellate Courts to prove that you have served your brief on the employer and the department. This packet includes an affidavit you can use if you serve them on the same date, but you may need to make extra copies if you don't do so.

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Relator (your name)

PETITION FOR WRIT OF
CERTIORARI

vs.

COURT OF APPEALS #:

1) _____,
Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #:

2) Department of Employment & Economic
Development,
Respondent

DATE OF DECISION:

TO: The Court of Appeals of the State of Minnesota:

_____ (your name) hereby petitions the Court of Appeals
for a Writ of Certiorari pursuant to Minn. Stat. § 268.105, subd. 7, to review a decision of the
unemployment law judge issued on the date noted above, upon the grounds that

(Summarize why you are appealing in a sentence or two. You can make a detailed argument in
the brief that you will be filing later.)

DATED: _____

(Signature of you or your attorney)

(Print your name)

(Address)

(Telephone number)

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Relator (your name)

WRIT OF CERTIORARI

vs.

COURT OF APPEALS #:

1) _____,
Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #:

2) Department of Employment & Economic
Development,
Respondent.

DATE OF DECISION:

TO: Department of Employment & Economic Development:

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the unemployment law judge issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the Clerk of the Appellate Courts to deliver them in accordance with rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Department of Employment & Economic Development and upon the respondent or its attorney at:

(address of employer or its attorney if it has one)

Proof of service shall be filed with the Clerk of the Appellate Courts.

DATED: _____
Clerk of the Appellate Courts

By: _____
Assistant Clerk

STATE OF MINNESOTA

IN COURT OF APPEALS

CASE TITLE:

Relator (your name)

**STATEMENT OF CASE OF
RELATOR**

vs.

COURT OF APPEALS #:

Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #:

Department of Employment & Economic
Development,
Respondent.

1. Agency of case origination.
Department of Employment and Economic Development
2. Jurisdictional statement.
Certiorari appeal.
Statute authority authorizing certiorari appeal and fixing time limit for appeal:
Minn. Stat. § 268.105, subd. 7(a)
3. State type of litigation and designate any statutes at issue.
Unemployment insurance, Minn. Stat. ch. 268
4. Short description of issues that you raised to the unemployment law judge:

5. Short description of the issues you are raising in this appeal. (Summarize why you are appealing in a sentence or two. You can make a detailed argument in the brief that you will be filing later.)

6. List any other related appeals.

7. Was testimony given at the hearing conducted by the unemployment law judge?
 Yes No

If testimony was given, the Department of Employment and Economic Development will send you a transcript. If no testimony was given, there is no transcript to send.

8. Oral argument.

Only attorneys can make oral arguments. If you do not have an attorney, neither you nor respondents will have oral argument.

If you have an attorney, is oral argument requested? _____ Yes _____ No

If yes, state where oral argument is requested: _____

9. Identify the type of brief to be filed:

() Formal brief under rule 128.02

A formal brief includes a table of contents, a statement of legal issues, a statement of the case, facts, an argument, a conclusion, and an addendum (*see* rule 128.02). A formal brief must be bound (*see* rule 132.01).

() Informal brief under rule 128.01, subd. 1

An informal brief contains a concise statement of your argument and an addendum. It may be stapled.

() Trial memoranda, supplemented by a short letter argument under rule 128.01, subd. 2, and an addendum.

All briefs must contain an addendum that includes a copy of the decision that you are appealing.

10. Names, addresses, zip codes and telephone numbers of relator and respondent (or attorneys, if any).

Relator:

Print name: _____

Address: _____

Telephone: _____

Signature: _____

Employer (or attorney):

Name: _____

Address: _____

Telephone: _____

Atty. Reg. #: _____

DEPARTMENT OF EMPLOYMENT & ECONOMIC DEVELOPMENT
E-200 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Relator (your name)

COURT OF APPEALS #

vs.

**RELATOR'S AFFIDAVIT
OF SERVICE BY MAIL OF
THE PETITION, UNSIGNED WRIT,
STATEMENT OF THE CASE, AND
UNEMPLOYMENT LAW JUDGE'S
DECISION**

1) _____,
Respondent (employer's name),

2) Department of Employment & Economic
Development,
Respondent

STATE OF MINNESOTA
COUNTY OF _____

I, _____ (**Your name**), being first duly sworn, depose
and say that on _____ (**Date**), I served the attached (1) **petition
for a writ of certiorari; (2) unsigned writ of certiorari; (3) statement of the case; and (4)
ULJ's decision from which appeal is taken**, on the following parties by mailing to each of
them a copy thereof, enclosed in an envelope, first-class postage pre-paid, and by depositing the
same in the United States Mail, directed to said party as follows:

(Name & address of employer OR
employer's attorney.)

**Department of Employment & Economic Development
E-200 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101**

I sent the completed petition for writ of certiorari, unsigned writ of certiorari, statement of the
case, and ULJ's decision from which the appeal is taken to:

____ Employer or employer's attorney
____ Department of Employment and Economic Development

(Your signature)

Dated: _____

Notary: _____

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

_____,
Relator (your name)

COURT OF APPEALS #

vs.

**RELATOR'S AFFIDAVIT
OF SERVICE BY MAIL OF
ISSUED WRIT OF CERTIORARI**

1) _____,
Respondent (employer's name),

2) Department of Employment & Economic
Development,
Respondent

STATE OF MINNESOTA
COUNTY OF _____

I, _____ (**Your name**), being first duly sworn, depose
and say that on _____ (**Date**), I served the attached **issued writ
of certiorari (signed by the Clerk of the Appellate Courts)** on the following parties by mailing
to each of them a copy thereof, enclosed in an envelope, first-class postage pre-paid, and by
depositing the same in the United States Mail, directed to said party as follows:

(Name & address of employer OR
employer's attorney)

**Department of Employment & Economic Development
E-200 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101**

I sent the issued writ (signed by the Clerk of the Appellate Courts) to:

____ Employer or employer's attorney

____ Department of Employment and Economic Development

(Your signature)

Dated: _____

Notary: _____

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Relator (your name)

COURT OF APPEALS #

vs.

**RELATOR'S AFFIDAVIT
OF SERVICE BY MAIL OF
BRIEF**

1) _____,
Respondent (employer's name),

2) Department of Employment & Economic
Development,
Respondent

STATE OF MINNESOTA
COUNTY OF _____

I, _____ (**Your name**), being first duly sworn, depose
and say that on _____ (**Date**), I served the attached **brief** on the
following parties by mailing to each of them a copy thereof, enclosed in an envelope, first-class
postage pre-paid, and by depositing the same in the United States Mail, directed to said party as
follows:

(Name & address of employer OR
employer's attorney)

**Department of Employment & Economic Development
E-200 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101**

I sent the brief to:

___ Employer or employer's attorney

___ Department of Employment and Economic Development

(Your signature)

Dated: _____

Notary: _____