# Rules for the Administration of the Oklahoma Employment Security Act

## JUNE 2021

**STATE OF OKLAHOMA**

**J. Kevin Stitt, Governor**
**Shelley Zumwalt, Interim Executive Director**

**OES-128 (Rev. 6-21)**

**RULES**
**of the**
**OKLAHOMA EMPLOYMENT SECURITY COMMISSION**
**2401 North Lincoln Boulevard**
**Will Rogers Memorial Office Building**
**Oklahoma City, Oklahoma 73105-4495**

(Codified 2-12-91)

These rules were adopted by the Oklahoma Employment Security Commission pursuant to the Oklahoma Administrative Procedures Act, 75 O.S §§250 et seq.

The rules in this document are NOT the official rules of the Oklahoma Employment Security Commission. The official text is the text accepted by the Secretary of State for publication in the Oklahoma Administrative Code. The official rules are on file in the Office of Administrative Rules of the Oklahoma Secretary of State. They are also available at the Secretary of State's web site at https://rules.ok.gov/code

The Oklahoma Employment Security Commission has tried to make sure the texts of the rules in this book are the same as the text on file in the Office of Administrative Rules of the Secretary of State. Any differences will be decided in favor of the text on file in the Office of Administrative Rules of the Secretary of State.

The rules are also available at: https://oklahoma.gov/oesc/about/policies.html

## INTRODUCTION

This book contains the Oklahoma Employment Security Commission Rules. These rules are also called the OESC Rules.

## THE NUMBERING SYSTEM

A section number is a number assigned to an individual rule. An example of a section number is 240:10-1-2. In this example:

**240:10-1-2**

"240" is the Title number assigned to the Oklahoma Employment Security Commission by the Editor of the Oklahoma Register. Each agency in the state is identified by a different title number.

**240:10-1-2**

"10" refers to Chapter 10. Chapters identify major areas of regularity control within the agency's authority.

**240:10-1-2**

"1" refers to Subchapter 1 of Chapter 10. A Subchapter contains a group of Sections related to the same general subject. Some Subchapters are further divided into "Parts" which are groups of related Sections. The numbers initially assigned to Subchapters and Parts are all odd numbers: 1, 3, 5, etc. This is to save space for future expansion.

**240:10-1-2**

"2" refers to Section 2 of Subchapter 1. a Section is an individual rule.

**Section Subdivision Letters and Numbers**: Individual sections (rules) may be subdivided according to the following structure:

A subsection is designated by a lower-cased letter of the alphabet enclosed in parentheses [e.g., (a), (b), (c)].

A paragraph is designed by an Arabic numeral enclosed in parentheses [e.g., (1), (2), (3)].

A subparagraph is designated by an upper-cased letter of the alphabet enclosed in parentheses [e.g., (A), (B), (C)].

A unit is designated by a lower-cased roman numeral enclosed in parentheses [e.g., (I), (ii), (iii)].

A subunit is designated by an upper-cased roman numeral enclosed in parentheses [e.g., (I), (II), (III)].

**EFFECTIVE: 11-1-21**

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# OKLAHOMA EMPLOYMENT SECURITY COMMISSION

## CHAPTER 1 – GENERAL PROVISIONS

### Subchapter 1 – General Provisions

**240:1-1-1. Purpose**

(a) **Content of Title.** Title 240 consists of rules adopted by the:

(1) Oklahoma Employment Security Commission (Commission) and,

(2) Board of Review (Board) for the Oklahoma Employment Security Commission.

(b) **Content of chapter.** Chapter 1 of Title 240 provides information on the organization, authority and location of the Commission and the procedures for individuals to submit petitions to promulgate, amend or repeal Commission rules.

(c) **Commission authority.** The Commission adopts rules for all Chapters in OAC Title 240 except "Chapter 15. Board of Review Procedures."

(d) **Board authority.** The Board of Review has separate rulemaking authority to adopt rules governing the proceedings over which it presides. The Board rules are contained in OAC Title 240, Chapter 15.

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

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

**"Aggregated Data"** means statistical data that has been stripped of any information that would identify any particular individual or employer and has been extracted or processed from a sufficiently large population of individuals or employers to insure that the data concerning any specific individual, employer, employee or unemployment benefit claimant cannot be discerned from the information if it is made public, thereby protecting the confidentiality of information maintained by the Oklahoma Employment Security Commission.

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

[**Source:** Added at 25 Ok Reg 1622, eff 6-12-08; Amended at 28 Ok Reg 638, eff 5-12-11]

**240:1-1-3. Organization of Commission**

The Oklahoma Employment Security Commission (Commission) *consists of five (5) members, appointed by the Governor, … two of whom shall represent employers, two*

*shall represent employees, and one shall represent the public. The representative of the public shall be the Chairman of the Commission*. [40:4-102]

**240:1-1-4. Authority**

The Oklahoma Employment Security Commission has *the power and authority to adopt, amend, or rescind such rules . . . as it deems necessary or suitable* [40:4-302] to administer the Oklahoma Employment Security (OES) Act. The Commission shall *adopt and, from time to time, may modify and amend rules . . . governing appeals before the Appeals Tribunal of the Commission and its referees*, . . . [40:2-607].
[**Source:** Amended at 23 Ok Reg 884, eff 5-15-06]

**240:1-1-5. Offices of the Commission**

The public may obtain information by contacting any of the Commission's local offices located throughout the State, a UI Service Center, or its administrative office located in the Will Rogers Office Building, 2401 North Lincoln Boulevard, P. O. Box 52003, Oklahoma City, OK 73152-2003, telephone number (405) 557-7200.
[**Source:** Amended at 9 Ok Reg 1831, eff 6-11-92; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 24 Ok Reg 1232, eff 5-25-07]

**240:1-1-6. Petitions to promulgate, amend or repeal rules**

Individuals or organizations who wish to petition the Oklahoma Employment Security Commission to promulgate, amend or repeal a rule must submit a typewritten request to the Executive Director, Oklahoma Employment Security Commission, Will Rogers Office Building, 5th Floor, 2401 North Lincoln Boulevard, P. O. Box 52003, Oklahoma City, OK 73152-2003. Requests must state rule number, purpose of the change and the exact wording for the amendment to the rule. The Executive Director will present such petition at the next regularly scheduled meeting of the Oklahoma Employment Security Commission for consideration and disposition.
[**Source:** Amended at 9 Ok Reg 1831, eff 6-11-92; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 16 Ok Reg 1176, eff 5-13-99]

**240:1-1-7. Petitions for declaratory rulings**

(a) Pursuant to the Administrative Procedures Act, 75 O.S. §307, individuals or organizations may file a Petition for Declaratory Ruling with the Oklahoma Employment Security Commission to obtain a determination on the applicability of any rule or order of the agency.

(b) The Petition for Declaratory Ruling shall include the following:

(1) Name, address, and telephone number of the individual or organization filing the Petition.

(2) Identification of the agency rule or order that the petitioner wishes to have a determination on.

(3) A short and plain statement of why the declaratory ruling is necessary, the facts that instigated the petition, the outcome the petitioner wishes to achieve,

and any prior agency determinations that may be affected by the declaratory ruling requested.

(4) The petition must be signed by the individual, or the chief executive officer of the organization filing it. If the individual or organization is represented by an attorney or representative, that person may sign the petition on behalf of the filing party. The attorney or representative must print his or her full name, address, telephone number, fax number, and e-mail address on the petition.

(c) The petition shall be filed with the Director of Appeals, Oklahoma Employment Security Commission, P.O. Box 53345, Oklahoma City, OK 73152-3345.

(d) Procedure:

(1) All declaratory rulings requested for rules and procedures concerning the administration of claims for unemployment benefits pursuant to Article II of the Employment Security Act of 1980 shall be heard by the Appeal Tribunal of the Oklahoma Employment Security Commission. All rules and statutes regarding hearings and appeals of unemployment benefit claims will apply to the hearing, determination, and appeal of these petitions.

(2) All petitions for declaratory rulings on all rules and procedures of the Oklahoma Employment Security Commission, other than those covered by subsection (d)(1) of this rule, shall be heard by the Assessment Board of the Oklahoma Employment Security Commission. All rules and statutes regarding hearings of the Assessment Board and appeals of Assessment Board determinations will apply to the hearing, determination, and appeal of these petitions.

(e) The petition for declaratory ruling shall be docketed and assigned a hearing officer according to the procedures of the Appellate Division. The hearing officer may require briefs from the petitioning party or the Oklahoma Employment Security Commission or both. Any person or entity wishing to file an Amicus Curiae brief must file a motion with the Appellate Division requesting to do so. Amicus Curiae briefs may be allowed by order, at the discretion of the hearing officer. The hearing officer shall have the authority to set motion deadlines, briefing schedules and hearing dates in all cases. Whether or not to hold hearings in a particular case will be within the discretion of the hearing officer. Determinations on petitions for declaratory rulings may be made on the briefs alone.

(f) Notice of all petitions for declaratory rulings shall be posted on the website of the Oklahoma Employment Security Commission and read into the record of the first Commission meeting that occurs more than 20 days after the filing of the petition. The notice will contain:

(1) The name of the petitioning party.

(2) The date of filing.

(3) A short synopsis of the issue presented by the petition including the citation to the statute, rule, policy, or procedures that is the subject of the petition.

(4) The address to send motions for permission to file amicus curiae briefs and the deadline for filing these motions.

(g) If it is determined that a party is using the declaratory ruling procedure to harass any other party or to hinder or delay the administration of justice, the hearing officer shall have authority to dismiss the petition on those grounds.
[**Source:** Added at 25 Ok Reg 1622, eff 6-12-08]

## Subchapter 3 – Records and Inspections

### 240:1-3-1. Location of records

The Oklahoma Employment Security Commission shall maintain records at its official offices. Records shall include those materials which are defined as "records" in the Open Records Act, 51 O.S., Sections 24A.1 through 24A.18.
[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94]

### 240:1-3-2. Non-confidential records

(a) During regular business hours any person may inspect any record that is not deemed confidential by law at the office of the Commission where the record is maintained.
(b) The person requesting inspection of the record shall make his or her request in writing. The writing shall include the name, address, and telephone number of the person making the request, the date the records will be inspected, including any relevant identification numbers.
[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 15 Ok Reg 1495, eff 5-11-98]

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

(a) Employer and unemployment insurance claimant records made confidential under Title 40 O.S., Section 4-508, may be released upon receipt of an administrative subpoena, court order or a notarized waiver of confidentiality signed by the person with the authority to waive the confidentiality of the records. No records shall be released unless the administrative subpoena, court order or notarized waiver of confidentiality is dated within ninety days of the request for retrieval or reproduction of the requested records.
(b) The administrative subpoena, court order or wavier of confidentiality form shall be served on the Commission's legal division or the custodian of records twenty (20) days prior to the date on which the records are to be produced. The records requested shall be described as specifically as possible and the administrative subpoena, court order or waiver of confidentiality form shall set out the employer account number or social security number of the employer or claimant whose records are being requested.
(c) An employer or unemployment insurance claimant with proper identification can request a copy of his or her records at the Commission's local office or at the administrative office located in the Will Rogers Memorial Office Building in Oklahoma City.
[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 16 Ok Reg 1176, eff 5-13-99;

Amended at 21 Ok Reg 1028, eff 5-15-04; Amended at 24 Ok Reg 1232, eff 5-25-07; Amended at 31 Ok Reg 1237, eff 9-12-14; Amended at 32 OK Reg 1737, eff 9-11-15]

**240:1-3-4. Copies**

Any person wishing to obtain a copy of any record must follow the procedures in rules 240:1-3-2 or 240:1-3-3 and include a request for copies in the writing, administrative subpoena, court order or waiver of confidentiality. The document requesting the records must allow at least twenty (20) days from the date of service for production of the documents.

[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 21 Ok Reg 1028, eff 5-15-04; Amended at 36 Ok Reg 842, eff. 7-25-19]

**240:1-3-5. Copying and reproduction fees**

(a) The Commission shall charge for copies of records, as set out in this rule, and a search fee for staff time spent in obtaining the records, pursuant to 240:1-3-6, except no charge will be made for requests in furtherance of a claim for unemployment benefits or if disallowed by the provisions of 51 O.S. §24A.5.

(b) The document copying fee is twenty-five cents ($0.25) per page or One Dollar ($1.00) per page for a certified copy. This fee is to be paid prior to the release of the requested records.

(c) The reproduction fee for copying any electronic file to a CD, DVD, flash drive, or other portable electronic storage device provided by the requester shall be Ten Dollars ($10.00) for each portable electronic storage device used.

(d) The reproduction fee for an audio recording of a hearing shall be Ten Dollars ($10.00).

[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 11 Ok Reg 4331, eff 7-14-94 (emergency); Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 23 Ok Reg 884, eff 5-15-06; Amended at 24 Ok Reg 1232, eff 5-25-07; Amended at 31 Ok Reg 1237, eff 9-12-14; Amended at 32 Ok Reg 1737, eff 9-11-15]

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

The search fee shall be applicable to all confidential records requested for commercial purposes, unless it is determined by the Director, in his or her discretion, that the public interest is served to such an extent that no charge should be applicable. The search fee will be $10.00 for each account or claimant record requested. No search fee will be charged for the production of non-confidential records.

[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 11 Ok Reg 4331, eff 7-14-94 (emergency); Amended at 12 Ok Reg 1373, eff 5-26-95; Amended at 23 Ok Reg 884, eff 5-15-06; Amended at 24 Ok Reg 1232, eff 5-25-07; Amended at 30 Ok Reg 483, eff 5-15-13; Amended at 31 Ok Reg 1237, eff 9-12-14]

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

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

[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 21 Ok Reg 1028, eff 5-15-04]

**240:1-3-8. Notices to requesters**

(a) Upon receipt of a request for inspection or copy of any records held by the Commission, the custodian of the record shall, within five (5) days of receipt of the request, notify the person requesting the record of one of the following:

(1) The request is granted and, if costs exceed One Hundred Fifty Dollars ($150) or the person or party requesting the copies owes the Commission in excess of that amount for copies and services already rendered, prepayment may be required.

(2) The request is denied and the reason for the denial. Such denial shall provide the statutory citation or other reasons for the denial.

(3) The request is granted, but that due to circumstances specified in the notice, the inspection of the document or the copy must be delayed. The reasons for the delay shall be specified in the notice sent by the custodian of records.

(b) In the event a delay is necessary, the custodian of the record shall notify the person requesting the record as soon as the record or copy is available.

(c) In the event the record has been sent to archives, the custodian of the records will inform the requester.

[**Source:** Added at 11 Ok Reg 1599, eff 5-12-94; Amended at 15 Ok Reg 1495, eff 5-11-98; Amended at 16 Ok Reg 1176, eff 5-13-99]

**240:1-3-9. Release of confidential information to specific government agencies**

(a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity or political subdivision to release aggregated data.

(b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:

(1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;
(2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;
(3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;
(4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
(5) The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;
(6) The Oklahoma Workers' Compensation Commission for use in investigation of workers' compensation fraud;
(7) The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
(8) The Oklahoma State Bureau of Investigation for use in the investigation of insurance fraud and health care fraud;
(9) Any Oklahoma state, Oklahoma county or Oklahoma municipal law enforcement agency for use in criminal investigations and the location of missing persons or fugitives from justice;
(10) The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;
(11) The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;
(12) The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;
(13) The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;
(14) The Office of Management and Enterprise Services to identify economic trends;
(15) The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;
(16) Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(I);
(17) An agency of this state or its political subdivisions that operates a program or activity designated as a required partner in the Workforce Innovation and Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 3151(b)(1), based on a showing of need made to the Commission;
(18) The national State Wage Interchange System, at the discretion of the Commission;

(19) The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;

(20) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or

(21) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.

(22) The Office of Juvenile Affairs for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs.

(23) Any county Public Defender's office in the state of Oklahoma and the Oklahoma Indigent Defense System for the purpose of determining financial eligibility for the services provided by these entities.

[**Source:** Amended at 28 Ok Reg 638, eff 5-12-11; Amended at 29 Ok Reg 459, eff 5-15-12; Amended at 31 Ok Reg 1237, eff 9-12-14; Amended at 32 Ok Reg 1737, eff 9-11-15; Amended at 34 OK Reg 1138, eff 9-11-17; Amended at 35 Ok Reg 1226, eff 9-14-18; Amended at 37 OK Reg 1222, eff 9-11-20]

## Subchapter 5 – Local Project Funding

### 240:1-5-1. Purpose

These rules set out the procedures and criteria that will be used to award local project funding contracts by the Oklahoma Employment Security Commission.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03]

### 240:1-5-2. Definitions

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

"**Commission**" means the Oklahoma Employment Security Commission.

"**Local project funding contract**" means an agreement made pursuant to Executive Order 98-37, not subject to statutory competitive bidding requirements, between a state agency and a local governmental entity or a private entity, or both, in which the state agency agrees to provide funding to accomplish a public purpose. The direct benefits of a local project funding contract shall accrue primarily to a local population rather than the state as a whole.

"**Local Project Administrator**" means the person employed by an entity that is awarded a local project funding contract, or the person employed by an entity that will be the fiscal agent acting on behalf of a group of entities that have collaborated to obtain a local project funding contract. The local project administrator will:

(A) Serve as the point of contact with the Commission;

(B) Submit and attest to the accuracy of all reports; and

(C) Receive payment of all funds and manage the funds.

"**LPF Auditor**" means the employee of the Commission designated by the Executive Director to be responsible for monitoring all local project funding contracts after an award of the contract has been made.

"**LPF Officer**" means the employee of the Commission designated by the Executive Director to be responsible for reviewing all local project funding contract proposals, and who will award contracts to the successful applicants.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03]

**240:1-5-3. Local project funding announcement**

Each local project funding contract will be announced by press release submitted to 25 newspapers in both metropolitan and rural areas. A paid advertisement will be placed in a newspaper that serves the geographic area where the local project will be located. An announcement will also be printed in the Oklahoma Register. All announcements will be submitted at least 20 days before the deadline for making application to obtain a local project funding contract. Each announcement submitted for publication shall contain the following information:

(1) The Oklahoma Employment Security Commission will be the contracting agency;

(2) A description of the type of projects eligible for local project funding contracts;

(3) A description of the type of persons or entities who are eligible or qualified for the local project funding contract;

(4) A total amount of money available from the agency for the local project funding contract;

(5) The closing date and time for receipt of applications; and

(6) The name, business address, telephone number, fax number, and e-mail address of the person who interested parties may contact for additional information and the name and business address of the person to whom applications must be submitted.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03]

**240:1-5-4. Evaluation of local project funding contract applications**

(a) The LPF officer will be responsible for evaluating all local project funding contract applications and to award contracts to the successful applicants

(b) Each local project funding contract application will be evaluated on the following criteria, if relevant:

(1) The lowest unit price or overall cost;

(2) The best value;

(3) The experience of the person or entity applying for the contract;

(4) The licenses, certifications, or academic achievement possessed by the applicant;

(5) The past contractual experience between the Commission and the applicant;

(6) The number of employees and the amount of resources the applicant will devote to the project;

(7) The financial condition or capitalization of the person or entity applying for the contract;

(8) Demonstrated ability to complete the project and meet all reporting requirements; and

(9) That the applicant is an equal opportunity employer.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03]

**240:1-5-5. Affidavit of LPF officer**

The LPF officer shall be responsible for submitting an affidavit to the Director of the Office of Management and Enterprise Services certifying that the award of the local project funding contract met all criteria set forth in these rules, as well as filing all other documentation required for the Office of Management and Enterprise Services to encumber the necessary funds and pay the local project funding contract.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03; Amended at 31 Ok Reg 1237, eff 9-12-14]

**240:1-5-6. Serial numbering of local project funding contracts**

Each local project funding contract shall be identified by a serial number that will be cited in all correspondence to the contracting parties and the Office of Management and Enterprise Services concerning the local project funding contract. The number shall begin with the agency number for the Commission, followed by the last two digits of the year in which the contract is made, then followed by the number assigned to the contract. The agency number, year, and contract number will be separated by dashes.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03; Amended at 31 Ok Reg 1237, eff 9-12-14]

**240:1-5-7. Monitoring of local project funding contracts**

The Commission will be responsible for monitoring all local project funding contracts awarded under these rules. The Commission will have the right to require the local project administrator to submit any reports deemed necessary for the award and administration of the contract, and the local project administrator will allow the LPF Auditor to audit any of its books and records that the auditor deems necessary in order to ensure that the purposes of the contract are being fulfilled and that all laws and rules are being adhered to. The LPF auditor will also have the right to conduct a physical inspection of any facilities or programs that are benefited or impacted by the local project funding contract.

[**Source:** Added at 20 Ok Reg 832, eff 5-12-03]

# CHAPTER 5 – EMPLOYMENT SERVICE

## Subchapter 1 – General Provisions

### 240:5-1-1. Purpose

This chapter establishes procedures for the administration of the Employment Service in the State of Oklahoma.

[**Source:** Added at 17 Ok Reg 1594, eff 5-25-00]

### 240:5-1-2. Definitions [RESERVED]

[**Source:** Reserved at 17 Ok Reg 1594, eff 5-25-00]

### 240:5-1-3. Registration for work

Any person may register for work through the Oklahoma Employment Service by completing the Employment Service Application on the Commission's website or at a Workforce Center. Once the application form is completed and entered into Oklahoma's public labor exchange, the person shall be considered an Employment Service applicant and registered for work in Oklahoma.

[**Source**: Added at 29 OK Reg 460, eff 5-15-2012; Amended at 30 Ok Reg 484, eff 5-15-13]

## Subchapter 3 – Internet Use

### 240:5-3-1. Internet user registration

The Employment Service provides personal computers in each of its local offices throughout the state for the purpose of accessing the Internet. Members of the public may use this Internet access to look for employment, obtain information concerning prospective employers, prepare resumes, and any other activity associated with searching for employment. In order to utilize the personal computers for this purpose, the user must complete an Internet User Application form, which is available in each local office. If the user is under the age of 18, the user's parent or guardian must sign the Internet User Application form before Internet access will be granted.

[**Source:** Added at 17 Ok Reg 1594, eff 5-25-00]

### 240:5-3-2. Time limit on Internet use [REVOKED]

[**Source:** Added at 17 Ok Reg 1594, eff 5-25-00; Revoked at 30 Ok Reg 484, eff 5-15-13]

### 240:5-3-3. Internet user prohibitions

Internet users must cooperate with the staff of the Oklahoma Employment Security Commission and follow all instructions regarding the use of the Internet computers. Internet users may not do any of the following:

(1) Interfere with or disrupt network users, services, or equipment.
(2) Make any attempt to damage computer equipment or software.
(3) Make any attempt to alter software configurations.

(4) Make any attempt to cause degradation of system performance.
(5) Use any OESC work station for illegal or criminal purposes.
(6) Access pornographic or gambling sites.
(7) Violate copyright laws or software licensing agreements while using the Internet computer.
(8) Engage in any activity which is deliberately malicious, libelous or slanderous.
(9) Install or download any software.
[**Source:** Added at 17 Ok Reg 1594, eff 5-25-00; Amended at 30 Ok Reg 484, eff 5-15-13]

**240:5-3-4. Penalties for violations**
If an Internet user is found to have violated any of the restrictions set out in 240:5-3-3, the user will receive a warning for the first violation, a 30 day suspension for the second violation, and an indefinite suspension for the third violation.
[**Source:** Added at 17 Ok Reg 1594, eff 5-25-00; Amended at 21 Ok Reg 778, eff 5-1-04]

# CHAPTER 10 – UNEMPLOYMENT INSURANCE PROGRAM

## Subchapter 1 – General Provisions

### 240:10-1-1. Purpose

This Chapter establishes procedures for:

(1) collection of unemployment taxes from employers;

(2) payment of benefits to unemployed individuals;

(3) individuals to file appeals when they are adversely affected by decisions of the Commission; and

(4) all actions necessary for the efficient operation of the OES Act [40:4-302].

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

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

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

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

**"Good cause"** means reasons beyond the control of the party seeking relief.

**"Interested Party"** means:

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

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

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

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

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

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

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

**"Mail", "Mailed"**, and **"Mailing"**, as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C.

§7502(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

**"Part-time work"** means employment of less than thirty-two (32) hours of work in a week.

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

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

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

**"RESEA Selection"** means:

(A) A systematic computer generated process that:

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

(ii) Refers identified claimants to reemployment services; and

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

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

(i) Recall status;

(ii) Union hiring hall agreement;

(iii) Education;

(iv) Job tenure;

(v) Industry;

(vi) Occupation;

(vii) Unemployment rate;

(viii) Number of prior UI claims; and

(ix) Maximum weekly benefit amount.

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

(i) Age;

(ii) Race or ethnic group;

(iii) Sex;

(iv) Color;

(v) National origin;

(vi) Disability;

(vii) Religion;

(viii) Political affiliation; and

(ix) Citizenship.

**"Temporary Layoff"** means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date. A temporary layoff may be requested by an employer for no more than eight (8) weeks

in any benefit year. A request for a temporary layoff must be made by the employer to the Commission in writing and must include a specific recall date within eight (8) weeks of the cessation of work or employment. The employer may apply to the Commission for an extension of the recall date. The extension shall not exceed four (4) additional weeks in the benefit year.

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

**"Wages"**

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

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

**"Wages paid"**

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

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

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

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

**"Working day"** means:

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

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

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 9 Ok Reg 1969, eff 6-11-92; Amended at 9 Ok Reg 3763, eff 8-7-92 (emergency); Amended at 10 Ok Reg 1397, eff 4-26-93; Amended at 10 Ok Reg 1981, eff 5-27-93; Amended at 12 Ok Reg 37, eff 11-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2905, eff 7-11-97; Amended at 16 Ok Reg 1178 and 1181, eff 5-13-99; Amended at 17 Ok Reg 1595, eff 5-25-00; Amended at 18 Ok Reg 1114, eff 5-11-01; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 25 Ok Reg 1623, eff 6-12-08; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1055, eff 6-15-11; Amended at 29 Ok Reg 461, eff 5-15-2012; Amended at 30 Ok Reg 487, eff 5-15-13; Amended at 31 Ok Reg 1239, eff 9-12-14; Amended at 32 Ok Reg 1738, eff 9-11-15; Amended at 36 Ok Reg 843, eff 7-25-19; Amended at 37 Ok Reg 1223, eff 9-11-20]

**240:10-1-3. Time computation**

(a) In computing any period of time prescribed or allowed by the Employment Security Act of 1980, by these rules, or by order of a hearing officer, the day of the act, event, or default from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, an Executive Order, or the Federal Statutes, or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, an Executive Order, or the Federal Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m.

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

[**Source:** Added at 18 Ok Reg 1114, eff 5-11-01; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 30 Ok Reg 487, eff 5-15-13; Amended at 34 Ok Reg 1140, eff 9-11-17]

**240:10-1-4. Electronic signatures**

(a) The term "electronic signature" means an electronic sound, symbol, text or process, attached to or logically associated with a document required to be filed by the Employment Security Act of 1980 or these rules, and executed or adopted by a person with the intent to sign the document.

(b) An electronic signature will have the same meaning and significance as would a handwritten signature that is affixed to an equivalent paper document. If an applicable law or rule requires a handwritten signature on a document, an electronic signature shall satisfy that requirement.

(c) The intent of a person or entity to sign a document shall be conclusively established if the signature is made on a certification page that is protected by a user ID and password. For all electronic signatures made outside of the certification page protocol, the electronic signature of the person or entity on a document will create a rebuttable presumption that the signature is valid and intended as a signature.

[**Source:** Added at 29 Ok Reg 463, eff 5-15-12]

**240:10-1-5. Filing by electronic means**

(a) If an individual or entity files a document by electronic means, this shall constitute implied consent for the Oklahoma Employment Security Commission to notify and deliver documents to that party by the same electronic means.

(b) An individual or entity who files by electronic means shall retain the original source document in its possession or control for a period of four (4) years and during the pendency of any legal proceedings involving the document, whichever is longer. The document shall be retained in exactly the same format and content as transmitted and shall be produced upon request by the Commission, an administrative law judge or any party to the legal proceedings. Upon failure to produce the original source document when requested, the Commission or an administrative law judge may refuse to consider the document as a properly filed instrument.

(c) The Oklahoma Employment Security Commission shall not be responsible for events that disrupt or render impossible the receipt of documents transmitted electronically.

[**Source**: Added at 29 OK Reg 463, eff 5-15-12]

**240:10-1-6. Date of Receipt of Payments**

The date of the receipt of a payment of money received by the Oklahoma Employment Security Commission shall be determined as follows:

1. Payments of money received through the mail shall be deemed to have been received as of the date shown by the postmark on the envelope properly addressed to the Commission’s office and containing the payment.

2. Payment of money received through an electronic fund transfer system shall be deemed to have been received by the Commission on the date on which the electronic payment was authorized for immediate payment to the Oklahoma Employment Security Commission.

3. All other payments of money shall be deemed to have been received on the date on which payments are received by a representative of the Commission.

[**Source:** Added at 33 OK Reg 1429, eff 9-11-16]

**240:10-1-7. Independent Contractors/Employees – 20 Factor Test**

Independent contractors are not subject to the control of an employer. Employees are subject to the control of an employer. The issue in a worker classification case is, "whether sufficient control is present to establish an employer-employee relationship" in a particular situation. The existence of an employer's control of an individual, or lack thereof, shall be decided using the twenty-factor test used by the Internal Revenue Service of the United States Department of Treasury in Revenue Ruling 87-41, 1987-1 C.B. 296.

(1) The twenty factors set out in Revenue Ruling 87-41 are as follows:

(A) **Instructions.** A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.

(B) **Training.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.

(C) **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(D) **Services Rendered Personally**. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

(E) **Hiring, Supervising, and Paying Assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(F) **Continuing Relationship.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

(G) **Set Hours of Work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.

(H) **Full Time Required.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such

person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

(I) **Doing Work on Employer's Premises.** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(J) **Order or Sequence Set.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(K) **Oral or Written Reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

(L) **Payment by Hour, Week, Month.** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

(M) **Payment of Business and/or Traveling Expenses.** If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

(N) **Furnishing of Tools and Materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(O) **Significant Investment.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent

contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

(P) **Realization of Profit or Loss.** A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

(Q) **Working for More Than One Firm at a Time.** If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(R) **Making Service Available to General Public.** The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

(S) **Right to Discharge.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

(T) **Right to Terminate.** If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

(2) Revenue Ruling 87-41 states that the degree of importance of each factor in subparagraph (a) varies depending on the occupation and the factual context in which the services are performed. The twenty factors in subparagraph (a) are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying the twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement; that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee.

(3) Revenue Ruling 87-41 states that when making a classification determination using the twenty factors set out in subparagraph (a), the relationship of employer and employee exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.

**[Source**: Added at 37 OK Reg 1227, eff 9-11-20]

## Subchapter 3 – Benefits
## Part 1 – General Provisions

### 240:10-3-1. Purpose

This Subchapter establishes the procedures for the payment of benefits to unemployed individuals who qualify under the Employment Security Act of 1980.

**[Source**: Amended at 31 Ok Reg 1239, eff 9-12-14]

### 240:10-3-2. Claimant's notification of change of address

It is the responsibility of the claimant to keep the Commission informed of his or her current mailing address at all times relevant to the claimant's claim for benefits. If the claimant has a change of mailing address, he or she must inform the Commission of this change in writing, by telecommunication, or via the Internet.

[**Source:** Added at 4 Ok Reg 1419, eff 4-27-92; Amended at 19 Ok Reg 1004, eff 5-13-02; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 26 Ok Reg 1030, eff 5-25-09]

### 240:10-3-3. Cancellation of a benefit claim

(a) After the filing of an initial claim for unemployment benefits, the claimant may cancel the claim up to the point of issuing the first unemployment benefit payment, except for claims cancelled under subparagraph (c)(1).

(b) In order to cancel a claim, the claimant shall submit a request to cancel the claim in writing to the Commission. The claimant must certify that the cancellation of the claim was not induced by duress, coercion, or the promise of the payment of money or other consideration by a third party.

(c) Claims can be cancelled for the following reasons:

1. Where a claimant has base period wages in another state and can be awarded a higher benefit amount in the other state.
2. Claims filed as a result of incorrect information given by a Commission representative.
3. Claims filed when the claimant was not unemployed.
4. When cancelling a claim is warranted to provide fundamental fairness to the claimant.

(d) The separating employer shall be notified of the cancellation of the claim.
(e) The Commission may deny the request for cancellation of the claim if the Commission determines that the request was submitted as a result of duress, coercion, or an agreement with a third party to pay money or other consideration, or if the Commission believes the request is part of a fraud scheme or would interfere with the proper administration of the Employment Security Act of 1980.
**[Source**: Added at 37 Ok Reg 1227, eff 9-11-20]

## Part 3 – Computation

### 240:10-3-10. Approved training

(a) **Definition of approved training. "Approved training"** means any training program authorized and financed by the United States Congress and under the control of the United States Department of Labor, Employment and Training Administration, or other suitable training program approved by the Commission.
(b) **Requirements for approval of training.** Approval of an individual for training will be determined by the Commission through consideration of all of the factors set out in 40 O.S. Section 2-108. In keeping with Section 2-108, the following definitions of terms are to be followed:

(1) **"Continued attendance and satisfactory progress"** as used in 40 O.S. Section 2-108 (B) shall be evidenced by continued enrollment at the training facility.

(2) **"Substantial and recurring demand"** as used in 40 O.S. Section 2-108 (A) (2) means that the demand for workers in such occupation is projected to continue for the foreseeable future.

(c) **Authority of Executive Director.** The Executive Director of the Oklahoma Employment Security Commission is authorized to issue operating procedures as necessary to implement OAC 240:10-3-10.
[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 9 Ok Reg 1833, eff 6-11-92; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 27 Ok Reg 821, eff 5-1-10]

### 240:10-3-11. Priority of deductions from unemployment insurance benefits

(a) If more than one type of deduction is being made from a claimant's weekly benefit amount, the deductions will be made in the following order until all funds are exhausted:

(1) Offset of a former benefit overpayment pursuant to 40 O.S. §2-613;

(2) Deduction of child support obligations pursuant to 40 O.S. §§2-303 and 2-801;

(3) Deductions made to repay a food stamp over issuance pursuant to 40 O.S. §§2-303 and 2-803;

(4) Deductions made in compliance with an Internal Revenue Service tax levy issued pursuant to 26 U.S.C. §6331(h);

(5) Voluntary deduction of individual income tax withholding pursuant to 40 O.S. §2-305;

(6) Voluntary deduction of health insurance premiums pursuant to 40 O.S. §2-304; and

(7) Any other deduction allowed by law.

(b) After the deduction of items listed in (a)(1)(2)(3) and/or (4) are made from the claimant's weekly benefit amount, if the balance remaining is less than that required to pay the income tax deduction, the health insurance premium deduction or any other deduction in full, then no deduction will be made for those items.

[**Source:** Added at 14 Ok Reg 2909, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98]

**240:10-3-12. Payment of benefits**

(a) All unemployment benefits payable by the Commission pursuant to the provisions of the Employment Security Act of 1980, shall be paid through the state selected vendor. The state selected vendor shall mail each claimant a debit card through which unemployment benefit payments to the claimant shall be made. The debit card shall be mailed to the address given by the claimant in the claimant's initial claim for benefits or in the latest notice of change of address. The claimant shall be responsible for the debit card and any PIN associated with the debit card.

(b) If the claimant wants to have his or her benefit payments made by direct deposit to the claimant's bank account, the claimant shall communicate this to the state selected vendor through the communication method provided by the state selected vendor. The payment option may be changed during the claimant's benefit year.

(c) If a claimant chooses to be paid by direct deposit to the claimant's bank account, the claimant must provide the state selected vendor with the following information:

(1) Claimant's bank account number

(2) Claimant's bank routing number

(3) Any other information required by the state selected vendor

[**Source:** Added at 23 Ok Reg 885, eff 5-15-06; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 26 Ok Reg 1030, eff 5-25-09; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 36 Ok Reg 845, eff 7-25-19]

## Part 5 – Eligibility

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

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

(b) **Seek and accept work.** The Commission shall direct and require that in diligently searching for work the claimant must do those things that a reasonably prudent individual would be expected to do to secure work using any means that are appropriate and customary each week. A diligent work search requires that a claimant make two (2) work search efforts each week and consists of some combination of the following elements:

(1) Union members must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.

(2) Participation in all reemployment services offered to the claimant by the Commission or any other State Employment Service.

(3) Submit applications for work with employers.

(4) Register with the placement service of any professional organization the claimant is a member of.

(5) Register with the placement service of any school, college, university, or training institution from which the claimant graduated.

(6) Take examinations for work with governmental agencies.

(c) **Increase of work search requirements.** The number of work search efforts described in subsection (b) may be increased at the discretion of the Commission based on the circumstances of each claimant.

(d) **Waiver of work search requirement.** If an employee is involved in a temporary layoff, a temporary layoff-federal, or is receiving supplemental unemployment benefit payments through an approved plan, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer.

The work search requirement may be waived by the Executive Director in consultation with the Deputy Director, the General Counsel, and a designated Division Director if it is found that claimants in a specific geographic area or region of the state are prevented from making a reasonable work search as a direct result of natural disaster, fire, flood, or explosion.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 12 Ok Reg 37, eff 11-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 18 Ok Reg 1114, eff 5-11-01; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 29 Ok Reg 463, eff 5-15-12; Amended at 32 Ok Reg 1740, eff 9-11-15; Amended at 36 Ok Reg 845, eff 7-25-19]

**240:10-3-21. Educational institutions—between academic terms**

Pursuant to 40 O.S. §2-209 and 26 U.S.C.A. §3304(a)(6)(A), benefits based on service and employment defined in 40 O.S. §1-210(3) or (4)shall be payable on the same terms and conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that individuals providing services to an educational institution shall not be paid benefits based on services to the educational institution for any week of unemployment commencing during the period between two successive academic years or terms, if the individual performs services in the first academic year or term and there is a contract or a reasonable assurance that the individual will perform services for the educational institution in the second academic year or term. A determination of the denial of benefits between an academic year or term shall be made based on the following subsections of this rule:

(1) Prerequisites. Before making a determination concerning the existence of a contract or reasonable assurance of employment in the following academic year or term, the Commission representative must find that three prerequisites exist. If any

one of the three prerequisites is not met, unemployment benefits must be allowed. The three prerequisites are:

(A) An offer of employment. The offer may be written, oral or implied. The offer must be genuine and made by an individual with authority to offer the employment.

(B) The employment offered in the following academic year or term must be in the same capacity as that of the previous academic year or term.

(C) The economic conditions of the job offered in the following academic year or term may not be considerably less than the conditions present in the previous academic year or term. If the claimant is offered a salary or wage for the following academic year or term that is less than 90% of the salary or wage paid in the previous academic year or term, this shall be considered economic conditions that are considerably less from the previous to the following academic year or term.

(2) The term "contract" means an enforceable, non-contingent agreement that provides for compensation: (i) for an entire academic year; or (ii) on an annual basis, though the contract terms describing compensation are not expressed as an annual salary.

(3) The term "reasonable assurance" means that there is a high probability that employment will be available based on the totality of circumstances and contingent nature of the offer made to the claimant. The following rules apply in making the determination:

(A) If the offer of employment contains a contingency, the Commission representative must determine if the contingency is within the employer's control or not in the employer's control. If the offer of employment is contingent upon a factor within the employer's control, such as course programming, allocation of funding, final course offerings, program changes, and faculty availability, the claimant does not have reasonable assurance and benefits shall be allowed. If the offer of employment is contingent on factors outside of the employer's control such as enrollment levels, legislative funding, or seniority, this would be considered to not be in the employer's control and further examination of the facts is required.

(B) If the employer's offer to a claimant contains a contingency that is not in the employer's control, the Commission representative must examine the contingent nature of the offer. The Commission representative must give primary weight to the contingency when making the determination on the claim. If the Commission representative finds that it is highly probable that the contingency will be met, that is, the issue upon which the contingency is based will probably be concluded in a way that will allow employment to occur in the next academic year or term, then reasonable assurance can be found. If it is not highly probably that the contingency will be met, that is, there is a good probability the contingency will be resolved in a way that will prevent employment from occurring in the next academic year or term, then reasonable assurance cannot be found.

(C) The Commission representative must analyze the totality of circumstances for each offer of employment to determine whether it is highly probable that there will be a job available for the claimant in the following academic year or term. This element requires considering factors such as legislative appropriations, funding levels, enrollment, the nature of the course of study to be taught, the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies. In order to find that there is reasonable assurance, the Commission representative is required to find, through evidence presented by the employer and the claimant, that it is highly probable that a job is available in the next academic year or term. In making a determination of reasonable assurance, the Commission representative is not required to find that there is a certainty of a job.

(4) Employer requirements.

(A) If the educational institution employer did not enter into a formal employment contract with the claimant, the employer shall submit a written statement to the Commission representative explaining the manner in which the employee was given a reasonable assurance of employment in the following academic period or term. The employer shall state whether the assurance was given in writing, orally, or implied through other means. The employer shall state the information that was given to the claimant about the offer of employment in the next academic year or term, including contingencies.

(B) If the educational institution employer entered into a formal employment contract with the claimant, the employer shall provide a copy of the contract to the Commission representative.

(C) The educational institution employer will be responsible to provide any other information necessary to make the determination of a contract of employment or reasonable assurance and any other information requested by the Commission representative.

(5) Claimant requirements. The claimant will be responsible to provide sufficient information for the Commission representative to make a determination of reasonable assurance of employment or a contract of employment in the next academic year or term, and the claimant shall provide any information or documents requested by the Commission representative.

[**Source:** Amended at 35 Ok Reg 1227, eff 9-14-18; Amended at 37 Ok Reg ____, eff 9-11-20]

**240:10-3-22. Filing claims for benefits**

Claims for unemployment insurance benefits are to be filed by claimants through the Internet or by telecommunication.

[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 30 Ok Reg 487, eff 5-15-13; Amended at 33 OK Reg 1429, eff 9-11-16]

**240:10-3-23. Claims for unemployment benefits – general requirements**

(a) **Definition.** An individual shall be defined as unemployed during a week whenever:

(1) the individual has been separated from work with his/her last regular employer and the individual has not during the week performed services in employment for any employer; or

(2) the individual has worked less than full time for some employer and earned less than his/her weekly benefit amount plus $100.00.

(b) **Effective date.** The effective date of an initial claim, additional initial claim, or a reopened claim shall be the first day of the calendar week in which the individual first files the initial claim, additional initial claim, or reopened claim.

(c) **Failure to report/good cause.** When the Commission representative determines that a claimant had good cause for failure to report as directed, a claim may be accepted at a later date, not to exceed seven (7) calendar days from the date originally specified for his/her reporting.

(d) **Continued claim.** A claimant who is filing for benefits under the Interactive Voice Response System or the Internet may file a continued claim provided the claimant files the continued claim within fourteen (14) calendar days from the week ending date of the claim or within fourteen (14) calendar days from the date the continued claim is furnished to the claimant.

(e) **Determination of eligibility for benefits.** The Employment Security Act of 1980 prescribes the following requirements:

(1) A Commission representative shall determine claimant's eligibility for benefits.

(2) A Commission representative shall accept written and verbal statements from the claimant and the employer.

(3) A Commission representative shall take any action necessary to determine the facts and to determine the rights of both the employer and claimant.

(4) A Commission representative shall write a determination which must include the following:

(A) An explanation of the parties' appeal rights;

(B) A summary of pertinent facts;

(C) The reasons for allowing or denying benefits; and

(D) The conclusion or legal results of the decision.

(5) Any interested party may appeal a determination. The appeal shall be filed with the Commission. When the appeal is filed, all interested parties shall be notified.

(f) In computing any period of time described in this rule, the day of the event from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included. Claimants required to make a filing on a day in which the offices of the Commission are not open shall make the filing through the

Internet or by telephone through the Interactive Voice Response system. Failure to file for a claim within the time allowed will result in denial of benefits for that week.
[**Source:** Amended at 11 Ok Reg 4333, eff 8-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1057, eff 6-15-11; Amended at 29 OK Reg 463, eff 5-15-2012; Amended at 30 Ok Reg 487, eff 5-15-13; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-3-24. Claims for partial unemployment benefits [REVOKED]**
[**Source:** Amended at 11 Ok Reg 4333, eff 8-1-94 (emergency); Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 24 Ok Reg 1233, eff 5-25-07; Revoked at 29 Ok Reg 464, eff 5-15-12]

**240:10-3-25. Payment of claim of deceased worker [REVOKED]**
[**Source**: Revoked at 30 Ok Reg 487, eff 5-15-13]

**240:10-3-26. Payment of benefits to interstate claimants**
(a) **Interstate agreement.** This Section shall govern the Commission in its administrative cooperation with other states adopting a similar rule for the payment of benefits to interstate claimants.
(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Agent state"** means any state in which an individual files a claim for benefits from another state.

(2) **"Benefits"** means the compensation payable to an individual, with respect to his/her unemployment, under the unemployment insurance law of any state.

(3) **"Interstate benefit payment plan"** means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(4) **"Interstate claimant"** means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Commission finds that this exclusion would create undue hardship on such claimants in specified areas.

(5) **"Liable state"** means any state against which an individual files, through another state, a claim for benefits.

(6) **"States"** include *the United States, the District of Columbia, Puerto Rico and the Virgin Islands*. [40:1-216]

(7) **"Week of unemployment"** includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

(c) **Registration for work.**

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

(d) **Canadian claims.** Extension of interstate benefit payments will include claims taken in and for Canada. OAC 240:10-3-26 shall apply in all its provisions to claims taken in and for Canada.

[**Source:** Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-3-27. Social Security account numbers or claim ID number**

(a) **Submittal by employing unit.** Each employing unit shall submit the name and Social Security account number of a worker when communicating with the Commission in connection with any report, claim, or proceeding under the Employment Security Act of 1980 with respect to such worker.

(b) **Submittal by individual.** Any individual shall submit his/her name and Social Security account number or a claim ID number when communicating with the Commission in connection with any report, claim, or proceeding under the Employment Security Act of 1980 with respect to such individual.

[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-3-28. Application of payments made to repay an overpayment of benefits**

(a) Offset or recoupment of current unemployment benefit payments – If the current benefit payments of a claimant are offset or recouped to repay a benefit overpayment, the funds from the offset or recoupment shall be applied to the principal amount of the indebtedness in the following order:

(1) First, to the earliest administrative overpayment established pursuant to 40 O.S. §2-613 (3) until the principal amount of the overpayment is paid in full.

(2) Second, to the administrative overpayment established next in time and all subsequent administrative overpayments established in chronological order until the principal amount of all administrative overpayments are paid in full.

(3) Third, to the earliest fraud or claimant error overpayment established pursuant to 40 O.S. §2-613 (1) or (2) until the principal amount of the overpayment is paid in full.

(4) Fourth, to the fraud or claimant error overpayment established next in time and all subsequent fraud or claimant error overpayments established in chronological order until the principal amount of all fraud or claimant error overpayments are paid in full.

(b) All payments or amounts collected in processes other than offset or recoupment of current unemployment benefit payments – When a payment is made or a collection of funds is accomplished to repay an indebtedness created by a previous overpayment of

unemployment benefits established pursuant to 40 O.S.§2-613 (1) or (2), the payment or the amount collected shall be applied in the following manner:

(1) First, to the fees that have been charged to the debtor in the earliest established overpayment until all fees for that overpayment are paid.

(2) Second, to accrued penalties in the earliest established overpayment until all penalties for that overpayment are paid.

(3) Third, to the accrued interest in the earliest established overpayment until all interest for that overpayment is paid.

(4) Fourth, to the principal amount in the earliest established overpayment until the principal amount is paid in full.

(5) After the payment or amount collected has been applied in the manner described in paragraphs 1 through 4 of this subsection and the earliest established overpayment is paid in full, any money left over, and all future payments or amounts collected, shall be applied in the same manner to the overpayment established next in time, and this procedure shall be repeated until all overpayments are repaid.

[**Source:** Added at 9 Ok Reg 1419, eff 4-27-92; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 30 Ok Reg 488, eff 5-15-13; Amended at 32 Ok Reg 1740, eff 9-11-15]

**240:10-3-29. Employer leave due to illness or disability**

If an employer places an employee on leave due to the illness or disability of the employee or the employee's immediate family member as defined by the Employment Security Act of 1980 at 40 O.S. §2-210, and the employer will allow the employee to return to work once the employee is released to work by the employee's physician or the assistance to the employee's immediate family member is no longer required, then the employee will be deemed to be job attached and not separated from employment.
[**Source**: Added at 28 Ok Reg 1057, eff 6-15-11]

## Part 7 – Protection of Rights and Benefits

**240:10-3-30. Notice to claimants of income tax withholding program**

All claimants of unemployment insurance benefits will be notified of the program in which state and federal income taxes may be deducted from the claimant's weekly benefit amount. The notice shall advise each claimant that:

(1) Unemployment insurance benefits are subject to state and federal income tax;

(2) State and federal requirements exist pertaining to estimated tax payments;

(3) The claimant may elect to have state and federal income taxes deducted and withheld from the claimant's payment of unemployment benefits at the percentages specified in 40 O.S. Section 2-305;

(4) Participation by the claimant in the income tax withholding program is voluntary; and

(5) The claimant shall be permitted to change a previously elected withholding status one time each benefit year. A change in withholding status must be requested by the claimant in writing or by telecommunication.

[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97; Amended at 19 Ok Reg 1004, eff 5-13-02; Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-3-31. Amounts deducted held in Unemployment Trust Fund**

Amounts of money deducted and withheld by the Commission from unemployment benefits shall remain in the unemployment trust fund for the State of Oklahoma until transferred to the federal and state taxing authorities as a payment of income tax.
[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97]

**240:10-3-32. Federal procedures followed**

The Commission shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service of the United States pertaining to the deducting and withholding of income tax.
[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97]

**240:10-3-33. Priorities of deductions from benefits [REVOKED]**
[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97; Revoked at 15 Ok Reg 1496, eff 5-11-98]

**240:10-3-34. Calculation of deductions**

The amount of claimant's income tax deduction will be calculated as a percentage of the gross weekly benefit amount due the claimant, before any other deductions are made. The percentages to be used in this calculation are specified in 40 O.S. Section 2-305.
[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97]

**240:10-3-35. Personal identification numbers**

At the claimant's option, the weekly filings for a continued unemployment claim can be made by telecommunication through the Commission's automated voice response system or via the Internet. In order to utilize these methods, the claimant will establish a personal identification number (PIN). It is the responsibility of the claimant to keep his or her personal identification number confidential at all times. A third party may not utilize a claimant's personal identification number to file a continued claim on behalf of, or in place of, the claimant. If a third party uses a claimant's personal identification number to obtain benefits, this will be considered unemployment compensation fraud on the part of the third party and gross negligence on the part of the claimant. The claimant shall be liable to repay to the Commission all benefits obtained by the third party through the use of the claimant’s personal identification number. The claimant may file a cause of action against the third party for any amount of money the claimant has become liable to repay to the Commission due to the third party’s actions, and the third party shall be liable to the claimant for any funds the third party received through fraud or theft.

[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 34 Ok Reg 1140, eff 9-11-17]

## Part 9 – Disqualification

**240:10-3-40. Normal working day [REVOKED]**
[**Source:** Revoked at 15 Ok Reg 1496, eff 5-11-98]

**240:10-3-41. Application of retirement proceeds and severance pay**
(a) **Lump-sum retirement payment.** A lump-sum distribution from a retirement plan shall be deductible from benefits in the week received.
(b) **Regular retirement payments**. If a claimant is receiving monthly retirement payments that are required to be deducted from unemployment insurance benefits pursuant to 40 O.S. §2-411, the Commission shall deduct 7/30ths of the monthly retirement payment from each week of unemployment benefits received.
(c) **Severance pay.** Severance pay which is deemed wages shall be deductible from benefits in the week received.
[**Source:** Amended at 9 Ok Reg 1327, eff 2-27-92 (emergency); Amended at 9 Ok Reg 1833, eff 6-11-92; Amended at 21 Ok Reg 779, eff 5-1-04; Amended at 29 Ok Reg 465, eff 5-15-12]

**240:10-3-42. Labor disputes**
(a) **Initial notice to Commission.** In cases of unemployment due to a strike, lockout or other labor dispute, the employing unit shall mail to the Oklahoma Employment Security Commission, Benefits, P. O. Box 52003, Oklahoma City, Oklahoma 73152-2003, a notice setting forth the existence of such dispute and the approximate number of workers affected.
(b) **List of participants.** Upon request by the Commission, such employing unit shall furnish to the Commission the names and Social Security account numbers of workers ordinarily attached to the department or the establishment where unemployment is caused by strike, lockout, or labor dispute.
(c) **Status report of labor dispute.** After the Appeal Tribunal has determined that a labor dispute exists, the Commission shall, once a month, send a request to the employer and the union representative or employee representative asking for the status of the labor dispute.
(d) **Claim processing.** In order to expedite the determination of whether or not a labor dispute exists, once the Appeal Tribunal has received notice that a possible labor dispute exists, and it has received the names and Social Security account numbers of workers ordinarily attached to the department or the establishment where the dispute exists (OAC 240:10-3-42 (a) and (b)), the Appeal Tribunal may accept a stipulation from any claimant, on a form to be designated by the Commission, that said claimant will be represented in his/her claim before the Appeal Tribunal as to the existence or not of a labor dispute by a named agent or representative. Said form shall enable the Appeal

Tribunal to rule on the existence of a labor dispute, which determination shall be binding on all claimants who have stipulated to the representation by the agent.

(e) **Interim employment.** Any claimant for unemployment benefits who has been determined to be ineligible to receive benefits because he/she is involved in a labor dispute may become eligible for benefits if he/she has accepted other employment and has earned wages equal to or in excess of ten (10) times his/her weekly benefit amount, provided he/she otherwise qualifies. Provided further, that the base period employer or employers shall not be charged for any benefits paid.

[**Source:** Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-3-43. Performed service and earned remuneration; reemployed and has earned wages**

(a) The terms *performed service and earned remuneration* as used in 40 O.S. Section 2-109, and *reemployed and has earned wages* as used in 40 O.S. Sections 2-404, 2-406, and 2-418 shall mean that the individual has performed service *in employment and earned wages for that service and employment*.

(b) Wages (or remuneration) as used and applied in 40 O.S. Sections 2-109, 2-404, 2-406 and 2-418 in conjunction with the term *ten (10) times his weekly benefit amount* shall be those wages that are subject to coverage by the Employment Security Act of 1980 and subject to Federal Social Security Taxes and/or Federal and State Income Tax laws.

(c) **"Earned remuneration"** means reasonable compensation derived from the providing of a service, declared or undeclared, based upon the average remuneration paid to like service providers in like industries.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 30 Ok Reg 488, eff 5-15-13]

**240:10-3-44. Domestic violence or abuse [REVOKED]**

[**Source:** Added at 21 Ok Reg 779, eff 5-1-04; Amended at 23 Ok Reg 888, eff 5-15-06]

**240:10-3-45. Cases involving positive drug or alcohol testing**

In order to establish misconduct due to a positive drug or alcohol test or the refusal to take a drug or alcohol test, the employer must produce the evidence required by the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §§551 through 565.

[**Source:** Added at 21 Ok Reg 779, eff 5-1-04; Amended at 29 OK Reg 465, eff 5-15-12]

## Part 11 – Filing Claims – Notice

**240:10-3-50. Employers who shall receive a notice of determination**

The phrase *to each other employer who timely filed a written objection to the claim* [40:2-507] refers to "each employer" involved in the claim for benefits. Thus both last and base period employers must timely file a written objection to the claim in order to have a right to receive a notice of a determination upon a claim.

**240:10-3-51. Information to be posted**

Each employing unit subject to the Employment Security Act of 1980 shall post and maintain in places readily accessible to individuals in its employ a notice explaining the worker's rights to unemployment benefits and how to make a claim for benefits pursuant to 40 O.S. Section 2-502. Notices are to be placed in locations easily accessible by employees and where it is likely for employees to see and read the notice. The notice may be posted electronically on an employer Internet website, or periodically distributed through e-mail if that can be shown to be the most likely method of reaching the employees with the notice. Notice forms are to be furnished by the Commission through the Commission's Internet website without cost to the employer.

[**Source:** Amended at 27 Ok Reg 821, eff 5-1-10]

**240:10-3-52. Information to separated worker**

(a) Each employing unit shall upon request furnish each worker separated from its employ (permanently or for an indefinite period, or for an expected duration of seven (7) or more days) at the time of such separation, or if delivery is impossible or impracticable, then by mail:

(1) a copy of the Commission's booklet entitled "Rights and Responsibilities of the Unemployed Workers (OES-341);" and

(2) sufficient identification of the employer's name, address and account number under which the worker's wages were, or will be, reported to the Commission.

(b) Mailing shall be to the last known address of the employee as recorded in the employer's personnel records.

[**Source:** Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-3-53. High volume employers and third party administrators – filing requirement**

(a) Any employer or third party administrator that files more than 30 protests in any month during the previous calendar year in response to benefit claim notices, on behalf of itself or client employers, shall file the protests through the State Information Data Exchange System (SIDES) or by telefax to the telefax number set out on the Notice of Benefit Claim form, and shall file any appeal by telefax only to the telefax number set out on the Notice of Determination. The Oklahoma Employment Security Commission shall not accept hand delivery, postal mailing, or e-mailing of protests or appeals by employers or third party administrators meeting the volume of filings set forth above.

(b) The Oklahoma Employment Security Commission may review the protests filed by employers and third party administrators and shall issue written determinations to employers or third party administrators that are determined to meet the filing volume set out in subsection (a) above. Appeal of this determination shall be made pursuant to the procedures set out in 40 O.S. §3-115.

[**Source:** Added at 25 Ok Reg 1623, eff 6-12-08; Amended at 31 Ok Reg 1239, eff 9-12-14; Amended at 32 Ok Reg 1741, eff 9-11-15]

**240:10-3-54. Electronic notification for employer in unemployment benefit claims**

(a) An employer may request that all notices concerning an unemployment benefit claim, in which the employer is involved, be delivered through electronic means. Once the request is processed, all notices in all unemployment insurance cases currently pending and that arise in the future may be delivered through electronic means by utilizing the employer portal.

(b) It will be the responsibility of the employer to access its account through the employer portal on a regular basis to check for notices concerning unemployment benefit claims that are posted there.

(c) All time deadlines shall be computed from the date of the electronic notification sent by the Commission.

[**Source**: Added at 29 OK Reg 466, eff 5-15-12; Amended at 33 OK Reg 1429, eff 9-11-16]

## Part 12 – Interest Waiver for Benefit Overpayments

**240:10-3-60. Definitions**

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

**"Interest"** means the interest that accrues in a claimant's overpayment pursuant to 40 O.S. Section 2-613.

**"Overpayment"** means an unemployment benefit overpayment established pursuant to 40 O.S. Section 2-613.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-61. Filing a request for waiver**

(a) A claimant who wants a waiver of interest that has accrued in his or her overpayment, must make a request for waiver in writing and file it with the Oklahoma Employment Security Commission.

(b) Filing must be accomplished by mailing or delivering the request document to the Benefit Payment Control Unit of the Oklahoma Employment Security Commission at the following address: Oklahoma Employment Security Commission, Benefit Payment Control Unit, P. O. Box 52925, Oklahoma City, OK 73152-2925.

(c) A request for waiver is deemed filed on the date the request letter is received by the Oklahoma Employment Security Commission.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-62. Three year limitation, assessment of penalty and accrual of interest**

(a) No interest can be waived if it accrued at a time more than three years before the date of the filing of the request letter.

(b) On appeal, the Appeal Tribunal shall summarily dismiss any request+ for waiver to the extent that the request pertains to interest that accrued at a time more than three years before the date of the filing of the request letter.

(c) Interest accrues on the principle amount of the overpayment on the first day of each month.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-63. Request letter**

(a) The request letter prepared by the claimant must contain the following information:

(1) Claimant's name, address and telephone number

(2) Claimant's Social Security number or claim ID number

(3) The time period for which interest is requested to be waived or the amount of interest requested to be waived.

(4) A statement of all reasons the claimant will rely on to explain why interest should be waived.

(b) The request letter must be signed by the claimant.

(c) If the claimant is represented by an attorney, the name, address, telephone number and Oklahoma Bar Association number of the attorney must also be included in the request letter.

(d) The claimant must attach to the request letter a copy of all notices, statements, determinations, correspondence, or any other documents relevant to the request for waiver.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03; Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-3-64. Initial determination**

(a) Upon receipt of the request letter, the Oklahoma Employment Security Commission will make the initial determination regarding whether or not a waiver should be allowed based on the information supplied by the claimant and the records of the Oklahoma Employment Security Commission on the overpayment in question.

(b) The Oklahoma Employment Security Commission will set forth its determination in writing and mail it to the claimant at the claimant's last known address.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-65. Appeal of initial determination**

(a) In order to appeal the determination of the Oklahoma Employment Security Commission, the claimant must file an appeal within 10 days of the date the determination letter was mailed to the claimant pursuant to 40 O.S. Section 2-603.

(b) The appeal document or communication must contain the following:

(1) The name, address and telephone number of the claimant.

(2) The claimant's Social Security number or claim ID.

(3) The date of the determination letter issued by the Oklahoma Employment Security Commission.

(4) Signature of the claimant.

(c) The appeal may be filed by any method allowed in 40 O.S. Section 1-224 or by telecommunication.

(d) If any claimant fails to file his or her appeal letter within the 10 days provided for in subsection (a) of this Section, then the determination of the Oklahoma Employment Security Commission shall be final, and no appeal shall thereafter be allowed.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03; Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-3-66. Jurisdiction and authority of Appeal Tribunal**

(a) The Appeal Tribunal of the Oklahoma Employment Security Commission shall have jurisdiction to hear all cases involving the appeals of determinations regarding claimant's requests for waiver of interest.

(b) The Appeal Tribunal shall have complete authority and discretion to determine whether any part or all of the interest at issue should be waived.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-67. Appeal Tribunal hearing**

After the claimant's appeal has been filed, a hearing will be set before the Appeal Tribunal to allow the claimant and the Commission an opportunity to present their arguments for or against the waiver. The notice of the hearing and the procedure regarding the conduct of the hearing shall be in accordance with, and governed by, the Oklahoma Employment Security Commission rules concerning Appeal Tribunal procedure found in OAC 240:10-13.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-68. Appeal**

Appeal of the decision of the Appeal Tribunal shall be governed by the Oklahoma Employment Security Commission rules found in Part 11 of OAC 240:10-13 and by the appeal provisions of the Employment Security Act of 1980 found at 40 O.S. Sections 2-605 through 2-609.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

**240:10-3-69. Waiver to be denied**

A waiver of interest will not be granted if it is determined that the claimant received an overpayment of benefits through fraud.

[**Source:** Added at 20 Ok Reg 833, eff 5-12-03]

## Part 13 – Appeals [RESERVED]

## Part 15 – Extended Benefits [RESERVED]

## Part 17 – Child Support [RESERVED]

# Subchapter 5 – Contributions

## Part 1 – General Provisions

**240:10-5-1. Purpose**

This Subchapter establishes procedures for payment of contributions, collection of taxes and judicial review of assessment of taxes and employer tax rates.

**240:10-5-2. Definitions**

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

**"Lessor Employing Unit"** is defined in 40 O.S. §1-209A(a). The terms "employee leasing company" and "staff leasing company" shall have the same meaning as the term "lessor employing unit."

**"Multiple Worksite Employer"** means an employer that operates its business at more than one permanent location.

**"Predecessor"** or **"Predecessor Employer"** means the employer who operated a business entity before it was acquired by the successor or acquiring employer.

**"Successor"** or **"Successor Employer"** means the acquiring employer of a business entity formerly operated by a predecessor employer.

**"Substantially All"** as used in the context of 40 O.S. §1-208, means that the acquiring employer has acquired another employer's trade, employees, organization, business, or assets to such an extent that the acquired employer is unable to continue in business.

**"Substantially Common Control"** means, as used in the context of 40 O.S. §3-111.1, means that sixty percent (60%) of the methods or mechanisms of control of the predecessor is found to be in place and ongoing in the successor entity.

**"Substantially Common Management"** means, as used in the context of 40 O.S. §3-111.1, means that sixty percent (60%) of the management positions of the predecessor entity remain in place in management positions with the successor entity.

**"Substantially Common Ownership"** means, as used in the context of 40 O.S. §3-111.1, means that sixty percent (60%) of the ownership of the predecessor entity in terms of the number of investor/owners or capital invested, controls at least sixty percent (60%) of the ownership interest in the successor entity.

[**Source:** Added at 14 Ok Reg 2909, eff 7-11-97; Amended at 17 Ok Reg 1595, eff 5-25-00; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 36 Ok Reg 846, eff 7-25-19]

**240:10-5-3. Notice of change of address, organization or ownership**

Any employer who has

(1) a change of mailing address;

(2) a change of e-mail address;

(3) a change of organization or transfer of ownership; or

(4) sold or otherwise disposed of a part or all of its business or assets; shall give written notice to the Commission immediately following the effective date of the change, sale or disposition.

[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-5-4. Surety bond for lessor employing units**

(a) **Statute.** This Section applies to the application for, and issuance of, the Surety Bond for lessor employing units that is provided for in 40 O.S. §1-209.1.

(b) **Form of bond.** The Surety Bond shall be on a form prescribed by the Oklahoma Employment Security Commission. Forms can be obtained from the Contributions Department of the Oklahoma Employment Security Commission at the following address: Oklahoma Employment Security Commission, Contributions Department, P. O. Box 52003, Oklahoma City, Oklahoma 73152-2003.
(c) **Corporate surety.** The Surety Bond shall be issued by a corporate surety authorized to do business in this state by the Oklahoma Insurance Department.
(d) **Bond application.** Any lessor employing unit that desires to purchase a Surety Bond must make its initial application with the Commission each year before March 1. The initial application and renewal application shall be on a form prescribed by the Commission. The application forms can be obtained at the address listed in (b) of this Section. Completed application forms shall be returned to the same address.
(e) **Client list.** The lessor employing unit wishing to apply for a bond or a bond renewal shall supply with their application a list of Oklahoma clients that will include the client's name, federal identification number, and the number of employees the lessor employing unit is leasing to each client lessee.
(f) **Term of bond.** The term of the Surety Bond shall be a one year period from April 1 of any given year to March 31 of the succeeding year. Any bond issued on a date other than April 1 shall extend from the date of issuance until the next March 31st, at which time the bond will expire.
(g) **Amount of bond.** The Surety Bond shall be in an amount equivalent to the contributions for which the lessor employing unit was liable in the last calendar year in which it accrued contributions, or in the sum of one hundred thousand dollars ($100,000.00), which ever is greater. The exact amount of the bond will be certified by the Oklahoma Employment Security Commission upon receipt of the initial application or renewal application for a bond from the lessor employing unit. The certification shall be mailed to the corporate surety that will be issuing the bond.
[**Source:** Added at 11 Ok Reg 1601, eff 5-12-94; Amended at 26 Ok Reg 1375, eff 5-12-95; Amended at 34 Ok Reg 1140, eff 9-11-17]

**240:10-5-5. Coverage of Indian tribes [EXPIRED]**
[**Source:** Added at 18 Ok Reg 3432, eff 7-1-01 through 7-14-02 (emergency)[1]]
***EDITOR'S NOTE:*** [1]*This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-02 (after the 7-14-02 expiration of this emergency action), Section 240:10-5-5 was no longer effective. For the official text of the emergency rule that was in effect from 7-1-01 through 7-14-02, see 18 Ok Reg 3432.*

## Part 3 – Rates

**240:10-5-10. Payment of contributions**
(a) **Date payment due.** Contributions shall become due and be paid on or before the last day of the month following the calendar quarter to which they relate, provided that:

(1) If, under the provisions of 40 O.S. Section 3-306, the Commission shall declare the period for which any contribution may become due to have terminated for an employer, and assesses the contributions for such period, such contributions shall immediately become due and be paid by such employer; and

(2) If an employing unit has not previously qualified as an employer under the Employment Security Act of 1980 and first qualifies as an employer during a calendar year, the employing unit shall pay contributions for all past periods of that year for which said employer is liable for the payment of contributions, on or before the due date for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

(b) **Date of receipt defined.**

(1) Payments of contributions received through the mail shall be deemed to have been received as of the date shown by the postmark on the envelope properly addressed to the Commission's office and containing such payment. If there is no proof from the Post Office of the date of mailing, the date of receipt by the Commission shall constitute the date of payment.

(2) Payments of contributions received from a private delivery service shall be deemed to have been received as of the date the private delivery service received the item according to the receipt or delivery document of the private delivery service. If there is no documentation of the date on which the private delivery service received the item, the date of receipt by the Commission shall constitute the date of payment.

(3) Payment of contributions received through an electronic fund transfer system shall be deemed to have been received by the Commission on the date on which the electronic payment was authorized for immediate payment to the Oklahoma Employment Security Commission.

(4) All other payments of contributions shall be deemed to have been received on the date on which payments are received by a representative of the Commission.

[**Source:** Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 30 Ok Reg 489, eff 5-15-13; Amended at 31 Ok Reg 1239, eff 9-12-14; Amended at 34 Ok Reg 1140, eff 9-11-17; 35 Ok Reg 1228, eff 9-14-18]

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

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

(1) The experience rating accounts of the successor employer and the predecessor, or predecessors, shall be consolidated for the experience period immediately preceding

the acquisition, and the Benefit Wage Ratio shall be computed on the total experience of all the employers.
(2) The Benefit Wage Ratio so computed shall be used to determine the successor's contribution rate for the remainder of the calendar year in which the acquisition occurred. The contribution rate so established shall be applicable to the successor employer beginning with the first day of the calendar quarter in which the acquisition occurred.
[**Source:** Amended at 12 Ok Reg 1375, eff 5-12-95; Amended at 22 Ok Reg 733, eff 5-15-05; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 30 Ok Reg 492, eff 5-15-13]

**240:10-5-12. Nonsubject entity acquiring the experience rating account of an employer**
(a) **One employer acquired.** When any employing unit acquires the experience rating account of an employer under the provisions of 40 O.S. Section 3-111 or 3-111.1, and the employing unit was not an employer subject to the Employment Security Act of 1980 prior to the acquisition, the employing unit shall acquire the contribution rate of the employer for the entire calendar year in which the acquisition occurred.
(b) **Two or more employers acquired.** When any employing unit acquires the experience rating account of two or more employers under the provisions of 40 O.S. Sections 3-111 or 3-111.1, and the employing unit was not an employer subject to the Employment Security Act of 1980 prior to the acquisition, the contribution rate for the employing unit shall be determined by consolidating the experience rating accounts of the two or more employers acquired for the experience period immediately preceding the acquisition, and the Benefit Wage Ratio computed on the total experience of all the employers so acquired. The Benefit Wage Ratio so computed shall be used to determine the successor's contribution rate for the calendar year in which the acquisition occurred.
(c) An employing unit that was not an employer subject to the Employment Security Act of 1980 prior to acquiring the predecessor employer shall not be allowed to acquire the experience rating account or contribution rate of the predecessor employer if the Commission finds that the employing unit acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.
[**Source:** Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 22 Ok Reg 733, eff 5-15-05; Amended at 23 Ok Reg 885, eff 5-15-06; Amended at 30 Ok Reg 492, eff 5-15-13 ]

**240:10-5-13. Experience rating contribution rates – appeal [REVOKED]**
[**Source:** Revoked at 24 Ok Reg 1233, eff 5-25-07]

**240:10-5-14. Experience rating – date of benefit payments**
For the purpose of computing contribution rates under the provisions of 40 O.S., Article 3, Part I, benefits for any compensable week ending in a prior calendar year shall be deemed to have been paid in the calendar year in which payment is made to the claimant in accordance with 40 O.S. Sections 1-221 and 3-105.

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

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

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

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

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

[**Source:** Amended at 11 Ok Reg 1603, eff 5-12-94; Amended at 28 Ok Reg 1058, eff 6-15-11 Amended at 30 Ok Reg 492, eff 5-15-13; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-5-16. Recall credit**

If an employer recalls a laid-off or separated employee, the employer shall be entitled to have the benefit wage charge reduced by the ratio of the weeks of remaining eligibility of said employee to the total number of weeks of original entitlement. If recalled, the employer shall notify the Commission of such recall within thirty (30) days following the end of the benefit year or the notice of a charge, whichever is later.

[**Source:** Added at 8 Ok Reg 2301, eff 6-13-91]

**240:10-5-17. Relief from benefit wage charges – disasters**

In order for an employer to remove a benefit wage charge from his or her account because of a separation of employees from employment that occurred due to a natural disaster, fire, flood, or explosion pursuant to 40 O.S. Section 3-106.1, the following requirements must be met:

(1) The affected employer must request in writing that the benefit wage charge be removed and shall state in this writing:

(A) date of the occurrence of the disaster;

(B) type of disaster;

(C) name of the business;

(D) physical location of the building, office, or plant involved in the disaster; and

(E) nature of the business conducted by this employer at the location that was damaged.

(2) The disaster must be reported to the Commission within one year and four months of the date of occurrence.

[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97]

**240:10-5-18. Tax rate information – Third Party Administrators**

(a) Third Party Administrators that have contracted with an employer for the purpose of filing and paying quarterly tax information electronically will be considered by the Commission as duly authorized agents of the employer and authorized by contract to receive necessary tax rate information for proper and accurate filing of wage information and contribution payments, provided the Third Party Administrator is registered with the Commission for the purpose of electronic filing of multiple employer accounts.

(b) If a Third Party Administrator, that is registered to electronically file multiple employer accounts, requests or obtains records on an account of an employer that the Third Party Administrator has not contracted to represent, the Commission may deny access to that Third Party Administrator to obtain any further records on any unemployment tax account, or the Commission may disable the ability of the Third Party Administrator to file tax accounts electronically, or both, until the Commission can be satisfied that the Third Party Administrator will refrain from obtaining information it is not authorized to receive.

[**Source:** Added at 27 Ok Reg 821, eff 5-1-10]

## Part 5 – Period, Termination, Election [RESERVED]

## Part 7 – Collection of Contributions

**240:10-5-30. Jeopardy assessments security defined**

In accordance with the provisions of 40 O.S. Section 3-306(4) relating to security which employers may furnish during the appeal of a jeopardy assessment, the Commission prescribes that such security shall be:

(1) Good and lawful money of the United States of America, or cashier's checks, certified checks and money orders.
(2) Bonds of the United States of America, and bonds whose principal and interest is guaranteed by the United States of America.
(3) Surety bond to be first approved by the Commission.
(4) Securities of a ready marketable value, to be first approved by the Commission.

**240:10-5-31. Claims for refund – procedure**

Each employer who files an application for refund under 40 O.S. Section 3-304 shall be notified of a determination denying the application in writing. Any employer aggrieved by the determination denying the application for refund may file a request for review and redetermination pursuant to 40 O.S. Section 3-115.
[**Source**: Amended at 30 Ok Reg 489, eff 5-15-13; Amended at 34 Ok Reg 1140, eff 9-11-17]

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

(a) When making payments on a delinquent account, an employer may designate a particular calendar quarter to which he or she wants the payment applied. This designation must be made in writing at the time the payment is made to the Commission.
(b) If an employer designates a particular calendar quarter to which he or she wants the payment applied, the payment shall be applied to the indebtedness owing for the quarter in the following manner:

(1) First, to the interest owing in the designated quarter until the interest amount is paid in full.
(2) Second, to the penalties owing in the designated quarter until the penalty amount is paid in full.
(3) Third, to the fees owing in the designated quarter until the fee amount is paid in full.
(4) Fourth, to the tax owing in the designated quarter until the tax amount is paid in full.
(5) Fifth, to the surtax owing in the designated quarter until the surtax amount is paid in full.
(6) If there is any sum of money left over after the payment has been applied to the indebtedness owing for the designated quarter, the remainder of the money shall be applied as set out in subsection (c) of this section.

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

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

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

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

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

(6) After the payment has been applied in the manner described in paragraphs (1) through (5) of this subsection, any money left over shall be applied in the same manner to the delinquent quarter that is next in time, and this procedure shall be repeated until the payment is exhausted.

[**Source:** Added at 9 Ok Reg 1419, eff 4-27-92]

**240:10-5-33. Application of payments to Computer Assessment Fund and Technology Reinvestment Apportionment**

(a) For all calendar quarters in which the computer fund assessment provided for in 40 O.S. Section 6-104 is applicable, any money received in payment of any indebtedness related to those quarters will be first applied to any amounts owing for the computer fund assessment. Any money remaining shall be applied pursuant to rule 240:10-5-32.

(b) For all calendar quarters in which the OESC Technology Reinvestment Apportionment provided for in 40 O.S. Section 6-204 is applicable, any money received in payment of any indebtedness related to those quarters will be first applied to any amounts owing for the OESC Technology Reinvestment Apportionment. Any money remaining shall be applied pursuant to rule 240:10-5-32.

[**Source:** Added at 15 Ok Reg 1496, eff 5-11-98; Amended at 36 Ok Reg 846, eff 7-25-19]

## Part 8 – Waiver of Penalty and Interest

**240:10-5-40. Definitions**

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

**"Interest"** means the interest that accrues in an employer's account pursuant to 40 O.S. Sections 3-301 and 3-806(A).

**"Penalties"** means the penalties assessed against an employer and added to his or her account pursuant to 40 O.S. Sections 3-301(B) and 3-806(B).

[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

**240:10-5-41. Filing a request for waiver**

(a) An employer who wants a waiver of penalty and/or interest that has been assessed or accrued in his or her account, must make a request for waiver in writing and file it with the Oklahoma Employment Security Commission.

(b) Filing must be accomplished by mailing or delivering the request document to the following address: Oklahoma Employment Security Commission, Contributions Department, P.O. Box 52003, Oklahoma City, OK 73152-2003.

(c) A request for waiver is deemed filed on the date the request letter is received by the Oklahoma Employment Security Commission.
[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-5-42. Three year limitation, assessment of penalty and accrual of interest**
(a) The employer must file the request for waiver with the Commission within three years of the date the penalty or interest at issue was assessed or accrued.
(b) No penalty or interest can be waived if it was assessed or accrued at a time more than three years before the date of the filing of the request letter.
(c) On appeal, the Assessment Board shall summarily dismiss any request for waiver to the extent that the request pertains to penalty and/or interest that was assessed or accrued at a time more than three years before the date of the filing of the request letter.
(d) A penalty assessed by the Oklahoma Employment Security Commission is deemed to be assessed on the day it is charged against an employer's account.
(e) Interest accrues on the principle amount of tax owing in an employer's account on the first day of each month.
[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

**240:10-5-43. Request letter**
(a) The request letter prepared by the employer must contain the following information:
(1) Employer's name, address and telephone number
(2) Employer's Oklahoma account number
(3) The calendar quarters associated with the penalties and/or interest the employer is requesting to be waived
(4) A statement of all reasons the employer will rely on to explain why penalty or interest should be waived
(b) The request letter must be signed by the employer, or the employer's agent or representative.
(c) If the employer is represented by an attorney, the name, address, and telephone number of the attorney must also be included in the request letter.
[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]; Amended at 34 Ok Reg 1140, eff 9-11-17]

**240:10-5-44. Initial determination**
(a) Upon receipt of the request letter, the Oklahoma Employment Security Commission will make the initial determination regarding whether or not a waiver should be allowed based on the information supplied by the employer and the records of the Oklahoma Employment Security Commission on the particular account in question.

(b) The Oklahoma Employment Security Commission will set forth its determination in writing and mail it to the employer at the employer's last known address. Contact information for the filing of an appeal will be set forth in the determination letter.
[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 25 Ok Reg 1623, eff 6-12-08]

**240:10-5-45. Appeal of initial determination**
(a) If an employer wants to appeal the determination of the Oklahoma Employment Security Commission, the employer must file a letter appealing the determination within 20 days of the date the determination letter was mailed to the employer.
(b) The appeal letter must contain the following:
(1) The name, address and telephone number of the employer.
(2) The employer's Oklahoma account number.
(3) Signature and title of person requesting appeal.
(c) The appeal must be filed with the Oklahoma Employment Security Commission by any method set forth in 40 O.S. §1-224 (A). Contact information for filing the appeal will be set forth in the determination letter.
(d) If any employer fails to file his or her appeal letter within the 20 days provided for in subsection (a) of this Section, then the determination of the Oklahoma Employment Security Commission shall be final, and no appeal shall thereafter be allowed.
[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 25 Ok Reg 1623, eff 6-12-08]; Amended at 34 Ok Reg 1140, eff 9-11-17]

**240:10-5-46. Jurisdiction and authority of Assessment Board**
(a) The Assessment Board of the Oklahoma Employment Security Commission shall have jurisdiction to hear all cases involving the appeals of determinations regarding employers' requests for waiver of penalty and interest.
(b) The Assessment Board shall have complete authority and discretion to determine whether any part or all of the penalty and/or interest at issue should be waived.
[**Source:** Added at 9 Ok Reg 3549, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

**240:10-5-47. Assessment Board hearing**
After the employer's appeal has been filed, a hearing will be set before the Assessment Board to allow the employer and the Commission an opportunity to present their arguments for or against the waiver. The notice of the hearing and the procedure regarding the conduct of the hearing shall be in accordance with, and governed by, the Oklahoma Employment Security Commission rules concerning Assessment Board procedure found in OAC 240:10-11.
[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

**240:10-5-48. Judicial review**

Judicial review of the decision of the Assessment Board shall be governed by the Oklahoma Employment Security Commission rules found in Part 11 of OAC 240:10-11 and by the judicial review provisions of the Oklahoma Employment Security Act found at 40 O.S. Sections 3-401 to 3-408.

[**Source:** Added at 9 Ok Reg 3548, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

**240:10-5-49. Waiver to be denied**

A waiver of penalty and/or interest will not be granted if:

(1) The sole reason for the employer's failure to file a report or remit a payment is that of forgetfulness or neglect on the part of the employer or the employer's agent, or

(2) The account history of the employer reflects a chronic pattern of late report filing, late payment of taxes, or both, or

(3) The employer has failed to fully cooperate and act in good faith in conducting his or her business with the Oklahoma Employment Security Commission or its authorized representative

[**Source:** Added at 9 Ok Reg 3549, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93]

## Part 9 – Judicial Review [RESERVED]

## Part 11 – Warrants

**240:10-5-60. Tax warrant filing fees**

(a) The Oklahoma Employment Security Commission may file tax warrants in the office of a county clerk or any other office charged with the filing and recording of liens against real and personal property located within that county or political subdivision.

(b) If the Oklahoma Employment Security Commission is charged a fee for the filing of a tax warrant, the amount of the fee will be added to the indebtedness owed by the employer against whom the tax warrant was filed. The fee will be added to the indebtedness owing for the latest calendar quarter listed on the face of the tax warrant.

[**Source:** Added at 12 Ok Reg 1375, eff 5-26-95]

**240:10-5-61. Sheriff service fees for tax warrants**

(a) The Oklahoma Employment Security Commission may deliver its tax warrants to the sheriff of the county in which an employer can be found. The sheriff shall then proceed to serve and execute the warrant in the same manner as a judgment of a court of record.

(b) The amount of the sheriff's service fee shall be added to the indebtedness owed by the employer against whom the tax warrant was issued. The fee will be added to the indebtedness owing for the latest calendar quarter listed on the face of the tax warrant. After the Commission collects the sheriff's service fee from the employer, the amount of the service fee shall be remitted to the sheriff's office that served the tax warrant.

[**Source:** Added at 12 Ok Reg 1375, eff 5-26-95]

## Part 13 – Unemployment Compensation Fund [RESERVED]

## Part 15 – Financing Benefits to Employees of the State

**240:10-5-70. Termination of individual reimbursing employers**

(a) **Assessment of regular and extended benefits.** Title 40 O.S. Sections 3-701 through 3-706 and Sections 3-801 through 3-810 establish provisions whereby state, local governments and nonprofit organizations may elect to reimburse the Commission for benefits paid in lieu of payment of contributions.

(1) Each employer must file a quarterly wage report on or before the last day of the month following the calendar quarter to be reported.

(2) At the end of each calendar quarter, the Commission shall assess and notify the reimbursing employer as to the amount of regular and extended benefits paid by the Commission during such quarter that is attributable to service in the employ of such employer.

(3) Said assessment shall be immediately due and payable and shall bear interest after forty-five (45) days from date of statement at the rate of one percent (1%) per month until paid.

(b) **Penalties.**

(1) If the employer fails or refuses to pay said assessment after same has become delinquent within forty (45) days after written notice for payment has been mailed, *a penalty of five percent (5%) of the amount due shall be added to the assessment*. [40:3-806 A]

(2) If the employer who elects to make such reimbursement in lieu of contributions fails or refuses to file required wage report(s) within fifteen (15) days after written notice has been mailed to such employer by the Commission, *a penalty of Ten Dollars ($10.00) for each day until such report is filed with a maximum of One Hundred Dollars ($100.00)* [40:3-806 B] will be imposed against such employer and shall be collected as provided by the OES Act.

(3) Any employer who has elected to make a reimbursement and such election has been in effect for two (2) or more calendar years that is delinquent in filing wage reports as required, or fails to pay the full reimbursement costs, including any interests and penalties and where such delinquency is more than forty-five (45) days and continues through the last day of the calendar year, shall result in the Commission automatically terminating such reimbursing employer's election to "reimburse payments in lieu of contributions."

(c) **Reimbursement of regular and extended benefits.** Title 40 O.S. Sections 3-701 through 3-706 and Sections 3-801 through 3-810 provide that electing employers are to reimburse the Commission in full for any amount on both regular or extended benefits paid that are attributable to service in the employ of such employers. Reimbursement shall be made by the employers with respect to payments made for weeks of unemployment which begin during the "effective period" of such election. The

**"effective period"** is hereby defined to begin with the first day of the calendar quarter or year such employers' election to reimburse is effective that is approved by the Commission. The "effective period" shall continue through each calendar year until such election has been terminated by the Commission and thereafter until such time that any regular or extended benefits could be payable based on wages having been paid and reported to the Commission for any calendar quarters prior to the effective date of termination to reimburse payments in lieu of contributions.

(d) **Application to terminate.** Application to terminate the reimbursement procedure after two (2) calendar years may be made on or before the last day of January immediately following the beginning of the calendar year for which such termination shall first be effective.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 11 Ok Reg 1603, eff 5-12-94]

**240:10-5-71. Group accounts [REVOKED]**

[**Source:** Revoked at 34 Ok Reg 1140, eff 9-11-17]

## Part 17 – Financing Benefits to Employees of Nonprofit Organizations

### 240:10-5-80. Establishment of group accounts for state, local governments and nonprofit organizations [REVOKED]

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 12 Ok Reg 1375, eff 5-26-95; Revoked at 34 Ok Reg 1140, eff 9-11-17]

## Part 19 – Maintenance and Production of Work Records

### 240:10-5-90. Records

Records shall be maintained by employers for a period of four (4) years. For purposes of audits, investigations, verifications, or certifications, each employer shall be required to maintain and produce to a representative of the Commission, the following records:

(1) Records that show the proprietary interest, type of organization and identity of the employing unit.

(2) All accounting records, business and personal.

(3) All bank statements and banking records for all checking and savings accounts, business and personal.

(4) All federal and state income tax returns, business and personal, including all schedules.

(5) All payroll records including federal Internal Revenue Service forms W-2, W-3, 940, 941, and 1099.

(6) All general ledgers, cash disbursement ledgers or journals, cash receipts journals, check registers, and check stubs for the employer's business.

(7) For each pay period, records that show:

(A) The beginning and ending dates of such period.

(B) The total amount of wages paid with respect to all employment.

(8) For each worker, records that show:

(A) Name.

(B) Social Security account number.

(C) Wages for each pay period showing separately:

(i) Cash wages.

(ii) Reasonable cash value of all remuneration in any medium other than cash (See OAC 240:10-1-2(b), Wages, Noncash remuneration).

(iii) Actual or estimated amount of gratuities received from persons other than his/her employing unit (See OAC 240:10-1-2 (a), Wages, Gratuities and tips).

(iv) Special payments for services rendered in prior periods, designating the period in which the service was performed.

(v) The total amount of wages paid for each pay period.

(9) Records showing the date on which the worker was hired, and the date he/she was separated from employment.

(10) Records showing the circumstances under which the worker was separated from employment shall be maintained with respect to the following:

(A) If separation from employment was because of lack of work, the records shall so state.

(B) If separation from employment was voluntary on the part of the worker, the records shall reflect the fact together with any reason(s) given by the worker.

(C) If separation from employment was a discharge of the worker due to misconduct, the record shall reflect the circumstances of the misconduct and the reason given by the employer to the worker for the discharge.

(D) If the separation from employment was other than those three listed above, the record shall reflect details of such "other reason."

(11) Records showing each day during the pay period that each employee was employed by the employer, the hours worked and the wages earned.

(12) Records showing the state or states in which his/her services are performed, and if such services are performed outside of this state, his/her base of operations (or if there is no base of operations, then the place from which his/her services are directed or contracted) and his/her residence (by state). All work records required by the Commission shall be kept safely and readily accessible at the place of business of the person or firm required to keep same. Nonresident employing units who customarily maintain work records required by OAC 240:10-5-90 outside the State of Oklahoma shall furnish to the Commission, upon request, certified copies of such records.

(13) For each quarter in the records retention period, a copy of the Employer's Quarterly Contribution and Wage Report, and any amended reports, as filed with the Commission.

(14) Records that will confirm, verify, or supply data that is required in any field on any Commission report form that is required to be filed by an employer or on behalf of an employer.

(15) Any other books, papers, correspondence, memoranda, and any other records deemed necessary for review by a Commission representative.

[**Source:** Added at 12 Ok Reg 1375, eff 5-26-95; Amended at 26 Ok Reg 1030, eff 5-25-09; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 30 Ok Reg 489, eff 5-15-13; Amended at 30 Ok Reg 489, eff 5-15-13; Amended at 36 Ok Reg 846, eff 7-25-19; Amended at 37 Ok Reg 1229, eff 9-11-20 ]

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

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

OES-3, Employer's Quarterly Contribution and Wage Reports, for all past periods of that calendar year on or before the due date for the quarterly report for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980.

(b) **Information required.**

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

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

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

(d) **Report filing.**

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

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

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

(e) **Payment of Tax.** All employers with an assigned Oklahoma State Unemployment Tax Act (SUTA) account number and all third-party administrators shall be required to pay all amounts due for quarterly state unemployment taxes on or before the last day of the month following the calendar quarter to which the taxes relate. All employers and third- party administrators shall make payment through an electronic fund transfer or a credit card acceptable to the Commission; unless an exception is granted by the Commission for the employer or third-party administrator to make payment in an alternative method.

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

[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1058, eff 6-15-11; Amended at 30 Ok Reg 490, eff 5-15-13; Amended at 36 Ok Reg 846, eff 7-25-19; Amended at 37 Ok Reg 1229, eff 9-11-20]

**240:10-5-92. Industrial classification statement**

On a periodic basis, all employers within the State of Oklahoma will be mailed an Industrial Classification Statement. Each employer is required to complete the statement by truthfully answering all questions posed in the statement and giving an accurate figure for all quantitative questions.

[**Source:** Added at 17 Ok Reg 1595, eff 5-25-00; Amended at 36 Ok Reg 847, eff 7-25-19]

**240:10-5-93. Lessor employing unit reports**

Each lessor employing unit operating within the State of Oklahoma shall report the following information to the Oklahoma Employment Security Commission on a quarterly basis for each client lessee:

(1) Industrial Classification for the client lessee.
(2) Number of employees being leased to that client lessee.
(3) County in which the leased employees are working.
(4) Total wages paid to the employees leased to the client lessee.

[**Source:** Added at 17 Ok Reg 1595, eff 5-25-00]

**240:10-5-94. Multiple worksite reports**

Each multiple worksite employer shall file a multiple worksite report each quarter that will set out the following information for every worksite:

(1) Industrial classification.
(2) Number of employees employed at that worksite.
(3) Physical address of the worksite.
(4) Total wages paid employees at that worksite.

[**Source:** Added at 17 Ok Reg 1595, eff 5-25-00]

**240:10-5-95. Occupational employment statistics survey**

(a) Each year, the Bureau of Labor Statistics of the United States Department of Labor randomly selects a number of Oklahoma Employers to participate in Occupational Employment Statistics Survey pursuant to 29 U.S.C. §2. The Oklahoma Employment Security Commission is required to mail the survey to each randomly selected employer and collect the information once the surveys are complete. Each selected employer will be required to provide the following information on all of its employees:

(1) Occupational level employment data.
(2) Wage data.

(b) No employee names, social security numbers or other identifying information will be collected in this report.

[**Source:** Added at 17 Ok Reg 2365, eff 6-25-00]

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

(a) Each employer must file an application for Oklahoma UI Tax Account Number, OES-1, in order to establish an Oklahoma UI Tax Account.

(b) All information requested in blocks 1, 2, 3, 4, and 5 of the form must be completed with all information requested including the social security number of the trustees, owners, directors, officers, partners, corporate officers or members of the entity filing the application.

(c) Blocks 6 through 17 must be truthfully filled out with all information that is applicable to the entity. The form must be signed by an owner, partner, director, officer or member of the entity in block 18 with the title of the signator and the date of signing specifically stated.

(d) If the Commission becomes aware of the existence of an employer that has failed or refused to file a form OES-1, the Commission may file the form on behalf of the employer using any information the Commission has available to it.
[**Source**: Added at 28 Ok Reg 1058, eff 6-15-11; Amended at 36 Ok Reg 847, eff 7-25-19]

**240:10-5-97. Professional Employer Organization – quarterly client list report**
Within thirty days after the end of each calendar quarter, each Professional Employer Organization is required to file a report listing all of its clients in the last quarter. The report shall be submitted on an Excel spreadsheet. It must contain the name and account number of the Professional Employer Organization and its registration license number issued by the Oklahoma Insurance Department. For each client listed, a PEO shall state the client's federal employer identification number, its name, and its address.
[**Source**: Added at 32 Ok Reg 1741, eff 9-11-15]

## Part 21 – Reciprocal Arrangement

**240:10-5-100. Employer elections to cover interstate workers**
(a) **Arrangement.** This Section shall govern the Commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the arrangement."
(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning unless the context clearly indicates otherwise:

**"Agency"** means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

**"Interested jurisdiction"** means any participating jurisdiction to which an election submitted under this Rule is sent for its approval; and "interested agency" means the agency of such jurisdiction.

**"Jurisdiction"** means any state of the United States, the District of Columbia, or, with respect to the Federal Government, the coverage of any Federal unemployment compensation law.

**"Participating jurisdiction"** means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

**"Services customarily performed"** by an individual in more than one jurisdiction means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.
(c) **Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.**

(1) **Application.** Any employing unit may file an election on Form RC-1, to cover under the law of a single participating jurisdiction all of the services performed for him/her by any individual who customarily works for him/her in

more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(A) any part of the individual's services are performed;

(B) the individual has his/her residence; or

(C) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(2) **Approval.**

(A) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

(B) If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

(C) In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of and have acquiesced in, the election.

(3) **Disapproval.** If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

(4) **Effective only if approved.** Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(5) **Withdrawal of election.** In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten (10) days after being notified of such action.

(d) **Effective period of elections.**

(1) **Commencement.** An election duly approved under this Rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(2) **Termination.**

(A) The application of an election to any individual under this Rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit

has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

(B) Except as provided in (A) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(C) Whenever an election under this Rule ceases to apply to any individual, under (A) or (B) of this paragraph, the electing unit shall notify the affected individual accordingly.

(e) **Reports and notices by the electing unit.**

(1) **Notification of affected employees.** The electing unit shall promptly notify each individual affected by its approved election, on the Form RC-2 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(2) **Notification for proper filing by separated employee.** Whenever an individual covered by an election under this Rule is separated from his/her employment, the electing unit shall again notify him/her, forthwith, as to the jurisdiction under whose unemployment compensation law his/her services are covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him/her as to the procedure for filing interstate benefit claims.

(3) **Change in status.** The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him/her to perform services in a new participating jurisdiction.

(f) **Approval of reciprocal coverage elections.** The Commission hereby delegates to its Executive Director, Director of Unemployment Insurance, or Chief of Contributions authority to approve or disapprove reciprocal coverage elections in accordance with this Section.

## Subchapter 7 – Administration
## Part 1 – General Provisions

**240:10-7-1. Purpose [REVOKED]**

[**Source:** Revoked at 15 Ok Reg 1496, eff 5-11-98]

## Part 3 – Commission [RESERVED]

## Part 5 – Board of Review

**240:10-7-20. Board of Review appeals and procedure [REVOKED]**
[**Source:** Revoked at 15 Ok Reg 1496, eff 5-11-98]

## Subchapter 9 – Penalties and Representation
## Part 1 – General Provisions [RESERVED]
## Part 3 – Penalties

**240:10-9-10. Willful violation of Act**

The term *willfully violate* [40:5-103] is clarified with respect to the following: "willful" shall mean a willful determination not to perform a known duty, or a reckless disregard of the performance of a known duty. It shall include the conscious and intentional omission of the care proper under the circumstances.

[**Source:** Added at 8 Ok Reg 2301, eff 6-13-91]

## Part 5 – Representation [RESERVED]

## Subchapter 11 – Assessment Board Procedure
## Part 1 – General Provisions

**240:10-11-1. Purpose**

This Subchapter establishes procedures for the Assessment Board to hear and issue decisions in the following cases:

(1) Assessments of contributions or reimbursement payments;
(2) Contribution rate notices;
(3) Successorship;
(4) Waivers of penalty or interest;
(5) Base period employer charges;
(6) Tax refund intercepts; and
(7) Workforce system audit resolutions**.**

[**Source:** Amended at 9 Ok Reg 3549, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 10 Ok Reg 4191, eff 7-7-93 (emergency); Amended at 11 Ok Reg 773, eff 12-13-93 (emergency); Amended at 11 Ok Reg 3789, eff 7-11-94; Amended at 19 Ok Reg 1004, eff 5-13-02; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-11-2. Definitions [RESERVED]**

**240:10-11-3. Organization**

(a) The Director of the Appellate Division of the Oklahoma Employment Security Commission shall administer the Assessment Board. The Director shall have supervisory authority over the chief hearing officer, hearing officers, and support staff of the Assessment Board. The Director, or designee, may reschedule hearings upon notice to the parties, administratively vacate decisions for good cause, grant or deny requests for continuances, and issue subpoenas in Assessment Board cases.

(b) All hearing officers appointed to the Appeal Tribunal shall also be hearing officers for the Assessment Board.

(c) The Director of the Appellate Division of the Oklahoma Employment Security Commission may appoint a qualified Appellate Division staff member who is not

designated as a hearing officer, to be a special referee to hear base period employer protests to benefit wage charges made by the Commission pursuant to 40 O.S. Section 3-106.

[**Source:** Amended at 9 Ok Reg 3549, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 10 Ok Reg 4191, eff 7-7-93 (emergency); Amended at 11 Ok Reg 1605, eff 5-12-94; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2905, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-11-4. Quorum [REVOKED]**

[**Source:** Revoked at 9 Ok Reg 3549, eff 7-20-92 (emergency); Revoked at 10 Ok Reg 1393, eff 4-26-93]

**240:10-11-5. Jurisdiction**

(a) The Assessment Board shall have jurisdiction to hear the following types of cases:

(1) Hearings concerning employer liability for unemployment contributions, pursuant to 40 O.S. Sections 1-208 and 1-210.

(2) Hearings concerning whether a worker is an independent contractor or an employee, pursuant to 40 O.S. Section 1-210(14).

(3) Hearings concerning any provision contained in Article III of the Employment Security Act of 1980, 40 O.S. Sections 3-101, et seq.

(4) Hearings concerning intercept of state tax refunds through the Oklahoma Tax Commission, pursuant to 68 O.S. Section 205.2(B).

(5) Hearings concerning a protest made by a debtor through the procedures of the Treasury Offset Program pursuant to 26 USCA Section 6402.

(b) The Commission, or its appointee, may assign other subjects of appeal to the Assessment Board as it deems appropriate.

[**Source:** Amended at 9 Ok Reg 3550, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 10 Ok Reg 4191, eff 7-7-93 (emergency); Amended at 11 Ok Reg 773, eff 12-13-93 (emergency); Amended at 11 Ok Reg 1605, eff 5-12-94; Amended at 11 Ok Reg 3789, eff 7-11-94; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg 2905, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 19 Ok Reg 1004, eff 5-13-02; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 30 Ok Reg 490, eff 5-15-13; Amended at 34 Ok Reg 1140, eff 9-11-17; Amended at 36 Ok Reg 847, eff 7-25-19]

**240:10-11-6. Address of Board**

(a) The Assessment Board is located at 2800 Northwest 36th Street, Suite 102, Oklahoma City, Oklahoma 73112. The telephone number of the Assessment Board is (405) 601-3311. The telefax number of the Assessment Board is (405) 601-3337.

(b) All instruments or correspondence pertaining to a protest before the Board shall be sent to: Assessment Board, P. O. Box 53345, Oklahoma City, Oklahoma 73152-3345.

[**Source:** Amended at 9 Ok Reg 3550, eff 7-20-92 (emergency); Amended at 10 Ok Reg 1393, eff 4-26-93; Amended at 12 Ok Reg 1375, eff 5-26-95; Amended at 14 Ok Reg

2909, eff 7-11-97; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 25 Ok Reg 1623, eff 6-12-08; Amended at 26 Ok Reg 1030, eff 5-25-09]

**240:10-11-7. Address of Appellant**

(a) It shall be the responsibility of each party to an appeal to notify the Assessment Board, in writing, of any change of mailing address or e-mail address and maintain a good mailing address or e-mail address for correspondence from the Assessment Board.

(b) If the party has representation, correspondence shall be mailed or e-mailed to the representative with a courtesy copy to the party. Notice shall be deemed given when mailed or e-mailed to the representative or, if no representative, to the party.

[**Source:** Added at 9 Ok Reg 3550, eff 7-20-92 (emergency); Added at 10 Ok Reg 1393, eff 4-26-93; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-11-8. Judicial ethics**

The hearing officers that conduct Assessment Board hearings shall be governed at all stages of the administrative decision making process by the canons of *The Model Code of Judicial Conduct for State Unemployment Insurance Appeals Officers*, established by the National Association of Unemployment Insurance Appellate Boards.

[**Source:** Added at 17 Ok Reg 1595, eff 5-25-00; Amended at 20 Ok Reg 833, eff 5-12-03]

## Part 3 – Appeals to Assessment Board

**240:10-11-11. Filing of protests**

The protest shall be addressed to the Board setting forth a detailed explanation as to the reason(s) for the protest. The protest shall also include, the name of the protestant, the protestant's Oklahoma account number, or Social Security number, whichever is applicable, and any other pertinent information.

[**Source:** Amended at 14 Ok Reg 2905, eff 7-11-97]

**240:10-11-12. Timeliness of filing – jurisdiction**

Each protest must be filed with the Board within the time limit set out in the determination letter which is the subject of the appeal. If the appeal is filed untimely without good cause, the determination will be final and binding, and the Assessment Board will be without jurisdiction to hear the appeal.

[**Source:** Added at 14 Ok Reg 2905, eff 7-11-97; Amended at 31 Ok Reg 1239, eff 9-12-14]

## Part 5 – Hearings

**240:10-11-20. Notice of hearings**

The initial notice of hearing with regard to any case shall be mailed by the Assessment Board to all interested parties, or e-mailed to all interested parties that have elected to be notified by electronic means, no fewer than 10 days prior to the scheduled hearing, unless all interested parties waive their right to the 10 day notice.

Notice of any subsequent hearings with regard to the same case may be given on the record, or by any other means reasonably calculated to provide reasonable notice of the hearing at any time before the hearing is to take place.
[Source: Amended at 28 Ok Reg 1059, eff 6-15-11; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-11-21. Continuances and rescheduled hearings**
(a) Requests for continuances prior to the hearing will only be granted for good cause by the Director, chief hearing officer, or designee. The request must:
(1) be in writing and received by the Assessment Board four (4) days prior to the date of the scheduled hearing, and;
(2) provide a detailed explanation for the reasons for such a request.
(b) If a continuance is granted, the parties will be notified of this decision and will subsequently receive a new notice of hearing.
(c) A request for continuance may be made at the hearing. The hearing officer will rule immediately. If a case is a continued, the case will be set for a date and time certain. If the case is not continued, all parties should be prepared to proceed.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98]

**240:10-11-22. Conduct of hearings**
(a) **Rules of evidence.** All hearings shall be conducted in accordance with 75 O.S. §310, except where OESC Rules or the Employment Security Act of 1980 provides for an alternative procedure, in which case the provisions of OESC Rules or the Employment Security Act of 1980 shall prevail.
(b) **Record of hearings.** All testimony shall be electronically recorded and the Board shall retain originals of all exhibits entered into evidence for as long as required by law.
(c) **Representation.** All protestants have the right to be represented by an attorney or other representative of his/her choice.
(d) Parties submitting audio, video or electronic images as evidence must do so in a standard format and must provide copies to the Assessment Board. The evidence must be provided in a manner that can be reviewed without special codes or software. The standard formats shall be published by the Assessment Board on the agency web site and updated periodically.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1059, eff 6-15-11]

**240:10-11-23. Telephone hearings**
(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.
(b) A request for an in-person hearing must be made five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the employer's name, and an explanation of the reasons for the request.
(c) Requests for in-person hearings will be considered based upon the following:

(1) Good cause shown, such as hearing impairment or language interpretation difficulties.
(2) Geographic location of the parties.
(3) Complexity of the issues.

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

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

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

[**Source:** Added at 15 Ok Reg 1496, eff 5-11-98; Amended at 31 Ok Reg 1239, eff 9-12-14]

**240:10-11-24. Good cause**

Good cause is defined as a situation beyond the control of the parties. Situations considered beyond the control of the party may include, a disabling personal illness, death in the immediate family, jury duty, military obligations or any other circumstance that would make it impossible for a party to appear for a hearing or comply with a requirement of these rules, the Employment Security Act of 1980, or any determination or notice served on the party. Good cause will not be found if the failure to act is due to the negligence or inattentiveness of the party or the party's representative or attorney-at-law.

[**Source:** Added at 15 Ok Reg 1496, eff 5-11-98; Amended at 27 Ok Reg 821, eff 5-1-10]

**240:10-11-25. Motion to reopen after failure to appear**

(a) If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within ten (10) days after the mailing of the Assessment Board's Order of Decision. The motion shall provide the reasons for the party's failure to appear and will become a part of the record.

(b) The Director of the Appellate Division, or a designee, shall review the Motion to Reopen the Hearing. For the purpose of ruling on the motion only, the Director or designee shall accept the facts offered in the motion as true. If the motion does not demonstrate good cause for failure to appear at the prior hearing as defined by OESC Rule 240:10-11-24, the Motion to Reopen the Hearing shall be denied. The Assessment Board shall issue a written order with appeal rights to district court.

(c) If the Director or designee finds that the motion demonstrates good cause or leaves a question as to whether good cause exists, the Chief Hearing Officer shall set the case for hearing on the issue of good cause for the non-appearance. All interested parties shall be notified of the newly scheduled hearing.

(d) After the hearing provided for subsection (c) above, if the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on the merits.

(e) After the hearing provided for subsection (c) above, if the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.
[**Source:** Added at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1059, eff 6-15-11]

**240:10-11-26. Cameras**

Cameras shall not be allowed in any hearing conducted by the Assessment Board.
[**Source:** Added at 26 Ok Reg 1030, eff 5-25-09]

**240:10-11-27. Documents and electronically recorded or stored information**

Each party to a hearing before the Assessment Board must deliver all documents and electronically recorded or stored evidence to the Assessment Board at least five (5) days before the date of hearing in order for copies to be made and delivered to the opposing party in preparation for the hearing.
[**Source:** Added at 36 OK Reg 847, eff 7-25-19]

## Part 7 – Witnesses and Subpoenas

**240:10-11-30. Subpoenas**

Each party to an appeal shall be entitled to present documents and witnesses in support of the presenting party's position.
(1) If a witness will not voluntarily appear, or if documents are not voluntarily tendered to a requesting party, the party may request that a subpoena be issued to compel the witness to appear and testify or to compel the production of documents.
(2) The request shall be made in writing and the requesting party shall furnish the Clerk of the Assessment Board the name and home address of the witness. The requesting party may furnish the work address of the witness if the home address is unknown and not reasonably ascertainable. The requesting party may request a subpoena for a witness to appear at the Assessment Board hearing or at a deposition to be held prior to the hearing. For a document subpoena, the requesting party shall furnish the clerk of the Assessment Board the name or title of the person with possession of the documents, the address of that person, and a description of the documents.
(3) The request for a subpoena must be filed with the Assessment Board not less than five (5) days prior to the scheduled hearing and the requesting party must justify the need for the witness' testimony, the deposition or the documents requested.
(4) The Director or designee will review the subpoena request for approval or denial. Requests for subpoenas can be denied if:

(A) The subpoena would be unduly burdensome or oppressive to the witness or person possessing the documents requested.

(B) The subpoena requests witnesses or documents that are irrelevant to the claim for unemployment benefits.

(5) Subpoenas will be served by certified mail at least five (5) days prior to the scheduled date of hearing.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-11-31. Witness fees and expenses**

A witness who is not an employee of the Commission and who is compelled by subpoena to attend a hearing shall receive a witness fee and mileage as provided for a witness in a civil proceeding in a court of this state. No mileage fee shall be paid to an individual for more than one case scheduled for the same period of time at the same location.

## Part 9 – Records of Assessment Board [RESERVED]

## Part 11 – Appeals to District Court

**240:10-11-50. Intent to appeal notice [REVOKED]**
[**Source:** Revoked at 15 Ok Reg 1496, eff 5-11-98]

**240:10-11-51. Petition for review**

The decision of the Board may be appealed to District Court by filing a petition for review with the clerk of that court *within thirty (30) days after the date of mailing of the decision*. [40:3-403]

**240:10-11-52. Payment of assessment or bond**

*As a condition precedent to the right* of appeal to District Court *and as a jurisdictional prerequisite* to the District Court *to entertain such appeal*, the employer must pay all amounts owing in the employer's account after the Board's decision is rendered or post a bond with the Commission in double the amount owing. The bond shall be written by a surety company licensed to do business in the State of Oklahoma by the Oklahoma Insurance Commission. [40:3-405 and 3-406]
[**Source:** Amended at 18 Ok Reg 1114, eff 5-11-01]

# Subchapter 13 – Appeal Tribunal Procedure

## Part 1 – General Provisions

**240:10-13-1. Purpose**

This subchapter establishes procedures to provide for a fair hearing before an impartial tribunal for all individuals appealing from determinations of the Commission or its representatives.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98]

**240:10-13-2. Definitions [RESERVED]**

**240:10-13-3. Authority**

The Commission of the Oklahoma Employment Security Commission promulgates this Subchapter pursuant to the provisions of the Oklahoma Employment Security Act, 40 O.S., Section 2-607. Any matter or procedure not specifically dealt with by either the Oklahoma Employment Security Act or by this Subchapter will be guided by the Administrative Procedures Act.

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

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

(b) **Authority of Director.**

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

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

[**Source:** Amended at 9 Ok Reg 1833, eff 6-11-92; Amended at 15 Ok Reg 1496, eff 5-11-98]

**240:10-13-5. Jurisdiction**

Pursuant to provisions of 40 O.S. Section 2-602, the Appeal Tribunal is empowered to decide an appeal from determinations of the Commission and/or its representatives. Pursuant to 40 O.S. Section 2-603, an appeal from a determination by the Commission must be filed within ten (10) days from the date of mailing by the Commission. Pursuant to 40 O.S. Section 2-616, an appeal from a determination of the Commission that a benefit overpayment occurred under 40 O.S. Section 2-613(1) or (2), must be filed within twenty (20) days from the date of mailing by the Commission. If not timely filed, the Appeal Tribunal is without jurisdiction, unless good cause for late filing is found by the Appeal Tribunal. Claims for exemption and any other matters relating to an income levy issued pursuant to 40 O.S. Section 2-618 may be filed at any time before the thirtieth day after the expiration date or termination of the levy.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 20 Ok Reg 833, eff 5-12-03; Amended at 25 Ok Reg 1623, eff 6-12-08]

**240:10-13-6. Administrative review**

If the Director of the Appeal Tribunal determines that an erroneous decision has been issued by a hearing officer, the Director may establish a three-member panel consisting of two (2) hearing officers and the Director to review the decision and issue a new corrected decision confirming or reversing the original decision. This shall only be accomplished during the ten (10) day appeal period or after the decision is written and prior to publishing.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91]

**240:10-13-7. Disqualification of hearing officer**

No hearing officer shall conduct a hearing in which he/she has any conflict of interest or bias.

(1) A challenge of conflict of interest or bias of a hearing officer may be made before the scheduled hearing with the Director or Chief Hearing Officer. The Director will decide whether or not good cause to disqualify has been shown, and if shown, will reassign the case.

(2) If a challenge for a conflict of interest or bias of a hearing officer is made during the hearing, the hearing officer shall determine whether or not to disqualify. If the challenge is sustained by the hearing officer, the case will be reassigned and rescheduled.

(3) A hearing officer may disqualify on his/her own volition with no challenge having been made if he/she feels a fair and impartial decision cannot be rendered.

(4) If a challenge is made within ten (10) days after the decision is issued, the challenge shall be considered as an appeal to the Board of Review.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 26 Ok Reg 1030, eff 5-25-09]

**240:10-13-8. Address of Appeal Tribunal**

The main office of the Appeal Tribunal is located in Oklahoma City at 2800 Northwest 36th Street, Suite 102, Oklahoma City, Oklahoma 73112, with telephone number (405) 601-3311, and telefax number (405) 601-3337.

(1) All instruments or correspondence pertaining to a case shall be sent to: Appeal Tribunal, P. O. Box 53345, Oklahoma City, Oklahoma 73152

(2) All instruments and correspondence shall bear the claimant's name and Social Security number.

(3) Copies of all documents, instruments, and correspondence mailed, telefaxed, or delivered to the Appeal Tribunal by an interested party to a case shall be sent to the other interested parties to the same case by the Clerk of the Appeal Tribunal.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 14 Ok Reg 2909, eff 7-11-97; Amended at 25 Ok Reg 1623, eff 612-08; Amended at 26 Ok Reg 1030, eff 5-25-09]

**240:10-13-9. Judicial ethics**

The hearing officers that conduct Appeal Tribunal hearings shall be governed at all stages of the administrative decision making process by the canons of *The Model Code of Judicial Conduct for State Unemployment Insurance Appeals Officers*, established by the National Association of Unemployment Insurance Appellate Boards.

[**Source:** Added at 17 Ok Reg 1595, eff 5-25-00; Amended at 20 Ok Reg 833, eff 5-12-03]

**240:10-13-10. Case review study**

(a) Pursuant to 40 O.S. §2-406.2, the Appellate Division of the Oklahoma Employment Security Commission shall review 5% of the unemployment benefit cases the Appellate Division decides each month in which misconduct was alleged and which was not appealed to the Board of Review.

(b) The case review will be conducted by the Director of the Appellate Division or designee and two designated hearing officers.
(c) This review will not be considered a reconsideration, rehearing, or appeal of the original determination. No changes of the original order or the outcome of the case shall be made as a result of this review.
(d) The results of all case reviews shall be summarized in an annual report that will be delivered to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairs of the Senate Committee on Business and Commerce and the House Committee on Economic Development and Financial Services.
[**Source**: Added at 32 Ok Reg 1741, eff 9-11-15]

## Part 3 – Appeals to Appeal Tribunal

### 240:10-13-20. Filing an appeal

With the exception of those entities who are required to file by telefax, the appeal should be filed with the Commission in any manner set forth in 40 O.S. Section 1-224 or by telephone through the Commission's interactive voice response system or by speaking with one of the Commission's claim representatives. A Commission representative will then forward the appeal to the Appeal Tribunal.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 21 Ok Reg 779, eff 5-1-04; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended 30 Ok Reg 491, eff 5-15-13; Amended at 31 Ok Reg 1239, eff 9-12-14]

### 240:10-13-21. Notice of appeal

All parties to an appeal will be notified that an appeal is filed. With notice that the appeal is filed, the parties shall also receive information of their rights.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98]

### 240:10-13-22. Date filed

(a) All instruments and correspondence mailed to the Appeal Tribunal shall be stamped with the date of receipt. Timely filing of documents shall be calculated pursuant to the provisions of 40 O.S. Section 1-224.
(b) Immediately upon receipt of the appeal document by any office of the Commission, an official date stamp shall be placed on its face.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98]

## Part 5 – Hearings

### 240:10-13-30. Case assignment

Cases are assigned by the Director or his/her designee.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98]

### 240:10-13-31. Location

The hearing location shall be reasonably convenient for all parties to the appeal.

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

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

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

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

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

(2) Geographic location of the parties.

(3) Complexity of the issues.

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

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

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

[**Source:** Amended at 10 Ok Reg 1981, eff 5-27-93; Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 31 Ok Reg 1239, eff 9-12-14]

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

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

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 28 Ok Reg 1059, eff 6-15-11]

**240:10-13-34. Content**

The notice shall contain a statement of the issue(s) on appeal; the nature of the controversy; date, time and place of the hearing; the type of hearing and name of the hearing officer to whom the case is assigned; unless it is a pool docket, which requires three or more hearing officers, hearing large groups of varied cases; and whether the hearing is to be conducted as an in-person hearing or telephone hearing.

**240:10-13-35. Commission – party**

The Commission is a party and entitled to notice in any proceeding before the Appeal Tribunal.

**240:10-13-36. Change of address**

It shall be the responsibility of each party to an appeal to notify the Appeal Tribunal in writing of any change of address and maintain a good address for correspondence from the Appeal Tribunal.

**240:10-13-37. Good cause**

Good cause is defined as a situation beyond the control of the parties. Situations considered beyond the control of a party may include, among other factors, a disabling personal illness, death in immediate family, jury duty, or military obligations. Good cause will not be found if the failure to act is due to the negligence or inattentiveness of

the party or the party's representative or attorney-at-law.
[**Source:** Amended at 27 Ok Reg 821, eff 5-1-10]

**240:10-13-38. Continuances**

(a) Requests for continuance prior to the hearing will only be granted for good cause by the Director or designee.

(1) The request must be in writing and received by the Director four (4) days prior to the date of the scheduled hearing.

(2) The written request must provide a detailed explanation of the reasons for such a request.

(3) Parties will be notified of a continued hearing and subsequently receive a new notice of hearing.

(b) A request for continuance may be made at the hearing. The hearing officer will rule immediately and should set the continued case for a date and time certain.

**240:10-13-39. Nonappearance**

(a) If the appellee fails to appear after having been duly notified of the hearing, the hearing officer will proceed with the hearing. Testimony and evidence will be received from the parties in attendance and a decision rendered.

(b) If the appellant fails to appear after having been duly notified of the hearing, the hearing officer shall review the documentation upon which the Commission based its determination. If the hearing officer's review of the documentation demonstrates that the determination is not incorrect as a matter of law and that it is supported by some evidence in the documentation, the hearing officer shall enter a default judgment or order favoring the appellee. If the hearing officer's review of the documentation demonstrates that the determination is incorrect as a matter of law or that it is wholly unsupported by evidence in the documentation, the hearing officer shall proceed with the hearing. Testimony and evidence will then be received from the parties in attendance and a decision rendered.

[**Source:** Amended at 24 Ok Reg 1233, eff 5-25-07]

**240:10-13-40. Reopen**

(a) If a party does not appear for a scheduled hearing, the party may move to reopen the hearing within ten (10) days after the mailing of the Appeal Tribunal's Order of Decision. The motion shall provide reasoning for failure to appear and will become a part of the record.

(b) The Director of the Appellate Division, or a designee, shall review the Motion to Reopen the Hearing. For the purpose of ruling on the motion only, the Director or designee shall accept the facts offered in the motion as true. If the motion does not demonstrate good cause for failure to appear at the prior hearing as defined by all OESC Rule 240:10-13-37, the Motion to Reopen the Hearing shall be denied. The Appeal Tribunal shall issue a written order denying the motion with appeal rights to the Board of Review.

(c) If the facts offered in the motion demonstrate good cause or leave a question as to whether good cause exists, the Chief Hearing Officer shall set the case for hearing on the issue of good cause for the non-appearance. All interested parties shall be notified of the hearing to show good cause.

(d) After the hearing provided for subsection (c) above, if the hearing officer finds good cause as the basis for failure to appear at the previously scheduled hearing, the case will proceed to be heard on its merits.

(e) After the hearing provided for subsection (c) above, if the hearing officer does not find good cause for the party's failure to appear at the originally scheduled hearing, a decision will be rendered reinstating the original decision.

(f) If the party who failed to appear at the originally scheduled hearing appears for the new hearing and the party who appeared at the originally scheduled hearing does not appear, testimony and evidence from the party present will be taken, the recording made at the original hearing will be reviewed on the record, and the decision shall be rendered based upon the sworn testimony and other evidence submitted at both the first hearing and the second hearing.

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 24 Ok Reg 1233, eff 5-25-07; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1059, eff 6-15-11; Amended at 30 Ok Reg 491, eff 5-15-13]

**240:10-13-41. Withdrawal**

(a) An appeal may be withdrawn by the appealing party at any time prior to the decision being rendered only with approval of the Director of the Appeal Tribunal or his/her designee. A request to withdraw must be submitted in writing.

(b) The case will be dismissed with prejudice (meaning it cannot be brought forth again at a later date). The determination will then stand as final and binding on the parties.

**240:10-13-42. Conduct of hearings**

(a) **Hearings (in-person and telephonic).** Hearings will be conducted in a manner to protect the substantial rights of the parties. Hearings will be in accordance with the

requirements of the Employment Security Act of 1980 and the Administrative Procedures Act.

(b) **Rules of evidence.**

(1) The parties may present testimony and evidence in their own behalf and each party shall be allowed the right of cross examination. The hearing officer may also examine the parties and witnesses.

(2) All hearings shall be conducted in accordance with 75 O.S. §310, except where OESC Rules or the Employment Security Act of 1980 provides for an alternative procedure, in which case the provisions of OESC Rules or the Employment Security Act of 1980 shall prevail.

(c) Parties submitting audio, video or electronic images as evidence must do so in a standard format and must provide copies to the Appeal Tribunal. The evidence must be provided in a manner that can be reviewed without special codes or software. The standard formats shall be published by the Appeal Tribunal on the agency web site and updated periodically.

[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 27 Ok Reg 821, eff 5-1-10; Amended at 28 Ok Reg 1060, eff 6-15-11]

**240:10-13-43. Record of hearings**

There shall be a record made of each hearing by electronic device. The record shall include the appeal document and Commission records necessary to the appeal; testimony and exhibits introduced at the hearing; motions made by parties and rulings thereon; and any decision or order made by the hearing officer.

**240:10-13-44. Representation at hearings**

In all proceedings before the Appeal Tribunal, the parties may appear in person, by counsel, or by representative. Counsel or representative wishing to notify the Appeal Tribunal of an appearance for an interested party may do so by letter addressed to the Clerk of the Appeal Tribunal. All correspondence shall contain the name of the case and the claimant's Social Security number. When a party is represented by an attorney or other authorized representative, the party shall be deemed to have received notice, correspondence, decision, or order mailed by the Appeal Tribunal when said written communications are mailed to the attorney or representative.

**240:10-13-45. Legal fees [REVOKED]**

[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Revoked at 21 Ok Reg 779, eff 5-1-04]

**240:10-13-46. Cameras**

Cameras shall not be allowed in any hearing conducted by the Appeal Tribunal.

[**Source:** Added at 26 Ok Reg 1030, eff 5-25-09]

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

Each party to a hearing before the Appeal Tribunal must deliver all documents and electronically recorded or stored evidence to the Appeal Tribunal at least five (5) days

before the date of hearing in order for copies to be made and delivered to the opposing party in preparation for the hearing.
[**Source:** Added at 36 Ok Reg 847, eff 7-25-19]

## Part 7 – Witnesses and Subpoenas

### 240:10-13-60. Subpoenas

Each party to an appeal shall be entitled to present documents and witnesses in support of the presenting party's position.
(1) If a witness will not voluntarily appear, or if documents are not voluntarily tendered to a requesting party, the party may request that a subpoena be issued to compel the witness to appear and testify or to compel the production of documents.
(2) The request shall be made in writing and the requesting party shall furnish the Clerk of the Appeal Tribunal the name and home address of the witness. The requesting party may furnish the work address of the witness if the home address is unknown and not reasonably ascertainable. The requesting party may request a subpoena for a witness to appear at the Appeal Tribunal hearing or at a deposition to be held prior to the hearing. For a document subpoena, the requesting party shall furnish the clerk of the Appeal Tribunal the name or title of the person with possession of the documents, the address of that person, and a description of the documents.
(3) The request for a subpoena must be filed with the Appeal Tribunal not less than five (5) days prior to the scheduled hearing and the requesting party must justify the need for the witness' testimony, the deposition or the documents requested.
(4) The Director or designee will review the subpoena request for approval or denial. Requests for subpoenas can be denied if:

(A) The subpoena would be unduly burdensome or oppressive to the witness or person possessing the documents requested.

(B) The subpoena requests witnesses or documents that are irrelevant to the claim for unemployment benefits.

(5) Subpoenas will be served by certified mail at least five (5) days prior to the scheduled date of hearing.
[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 16 Ok Reg 1178, eff 5-13-99; Amended at 24 Ok Reg 1233, eff 5-25-07]

### 240:10-13-61. Witness fees and expenses

An individual compelled to attend a hearing by subpoena shall receive a witness fee and mileage as provided for witnesses in civil proceedings in courts of this State. No mileage fees shall be paid for more than one case covering the same time period on the same travel.

## Part 9 – Records of Appeal Tribunal

**240:10-13-70. Recording of hearings**

Any party to a hearing before the Appeal Tribunal may request a copy of the official recording of the Appeal Tribunal hearing. The request shall be in writing and shall identify the hearing by docket number and the date on which the hearing occurred.
[**Source:** Amended at 15 Ok Reg 1496, eff 5-11-98; Amended at 30 Ok Reg 491, eff 5-15-13]

**240:10-13-71. Requests for copies of documents entered into evidence**

Any party to an Appeal Tribunal hearing may request a copy of all documents entered into evidence in the hearing. The request shall be in writing and shall identify the hearing by docket number and the date on which the hearing occurred.
[**Source:** Amended at 8 Ok Reg 2301, eff 6-13-91; Amended at 30 Ok Reg 491, eff 5-15-13]

**240:10-13-72. Inspection of records**

Prior to the hearing, the parties may request the records of the Appeal Tribunal that will be available at the hearing. The request may be informal but must be no later than one hour before the scheduled time of hearing. After the decision is rendered and before an appeal is perfected to the Board of Review, the records may also be inspected by a party to the case.

**240:10-13-73. Decisions**

Each party in a case shall receive a copy of the written decision in that case, which shall include findings of fact and conclusions of law based upon the record of the Appeal Tribunal.
[**Source:** Amended at 16 Ok Reg 1178, eff 5-13-99]

## Part 11 – Appeals to Board of Review

**240:10-13-80. Appeal rights of interested parties**

(a) All Appeal Tribunal orders that constitute a final disposition of a case on its merits shall clearly set out the appeal rights of the parties to the case and instruct the parties on how to appeal to the Board of Review. Orders that determine pre-hearing issues, post-hearing issues, ancillary issues, or which do not constitute a final disposition of the case shall not contain a statement of appeal rights and instructions to the parties.
(b) When a party has perfected an appeal to the Board of Review pursuant to 40 O.S. §§2-605 and 2-606 and Board of Review Rule 240:15-3-3, the Appeal Tribunal is divested of jurisdiction of the case. Once an appeal is perfected, the Appeal Tribunal shall not set any further hearings in the case, and cannot withdraw, modify, or reverse any decision.
[**Source:** Amended at 34 Ok Reg 1140, eff 9-11-17]

**240:10-13-81. Certification to Board of Review [REVOKED]**
[**Source:** Revoked at 15 Ok Reg 1496, eff 5-11-98]

# CHAPTER 12 – TRADE ACT PROGRAMS

## Subchapter 1 – General Provisions

### 240:12-1-1. Purpose

This Chapter informs the public about the Trade Adjustment Assistance (TAA) program and Trade Readjustment Allowance (TRA) benefits created by the Trade Act of 1974. TAA/TRA was created to *assist individuals who became unemployed as a result of increased imports return to suitable employment.* This Chapter addresses the requirements an applicant must meet in order to receive assistance and the procedures that the Oklahoma Employment Security Commission (OESC) will follow in acting on applications for assistance.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

### 240:12-1-2. Definitions

The definitions in this rule shall apply only to the Trade Act Programs governed by Chapter 12 of the Oklahoma Employment Security Commission Rules. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Commuting areas"** means the area within a radius of 50 miles of the applicant's place of residence.

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

**"Part-time work"** means employment of less than thirty-two (32) hours of work in a week.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92; Amended at 10 Ok Reg 1391, eff 4-26-93; Amended at 27 Ok Reg 828, eff 5-1-10]

### 240:12-1-3. Federal rules

The federal rules concerning the application for, and granting of, the benefits and allowances under the TAA and TRA programs are found at 20 C.F.R. Sections 617.1 through 617.66, and for the purposes of this Chapter shall be known as the "federal rules". The federal rules are hereby incorporated into this Chapter of the OESC rules by reference. The federal rules set out the basic rules concerning TAA/TRA benefits and allowances and take precedence over the rules of the OESC. The OESC rules in this Chapter have been created to implement, interpret, and clarify the requirements of the federal rules and to describe the procedure and practice requirements of the OESC concerning TAA and TRA benefits and allowances. If there is a conflict between a federal rule and any OESC rule, the federal rule will take precedence over the OESC rule and will pre-empt the provisions of the OESC rule.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-1-4. Application information**

Individuals seeking information or assistance regarding applications for TAA/TRA benefits or allowances should contact any local office of the OESC. The OESC is the state agency responsible for administering the TAA/TRA programs in Oklahoma.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

## Subchapter 3 – Trade Readjustment Allowances [RESERVED]

## Subchapter 5 – Reemployment Services

**240:12-5-1. Approval of training**

If an applicant applies for financial assistance for TAA training, the application process must be completed and approval of training granted before the first day of classes of training begins.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-5-2. Subsistence and transportation payments**

To be entitled to subsistence or transportation payments for TAA training, the applicant must be required to travel outside his or her commuting area to reach the training facility.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-5-3. Receipts for reimbursement**

In order to receive reimbursements for subsistence and/or transportation, an applicant must show a receipt from each vendor from which goods and services were purchased during the trip. Each receipt must show the name of the vendor and date of purchase.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-5-4. Maximum cost of training [REVOKED]**

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92; Revoked at 21 Ok Reg 780, eff 5-1-04]

**240:12-5-5. Usual and customary cost of training**

(a) Usual and customary cost of training is the reasonable cost of training after considering all factors relating to the type of training and the training facility.

(b) Training will not be approved at one institution when, all costs being considered:

(1) the same training can be obtained at another institution at a lower total cost, and

(2) the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other institutions or facilities.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

## Subchapter 7 – Job Search Allowances

### 240:12-7-1. Eligibility for allowances

(a) The applicant must meet all requirements of the federal rules concerning job search allowances found at 20 C.F.R. Sections 617.30 through 617.39 to be eligible for a job search allowance.

(b) A job search allowance will be allowed only when the applicant is required to travel outside the applicant's commuting area for a job interview.

(c) To be eligible for a job search allowance, an applicant must:

(1) File an application for job search allowance before traveling to the interview; and

(2) Schedule the job interview with the prospective employer before attending the interview.

(d) No job search allowance will be paid if the claimant fails to attend a scheduled interview.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

### 240:12-7-2. Information required

To receive a job search allowance, the applicant must provide the following information for each scheduled interview attended:

(1) Name of the company;

(2) Address of the company;

(3) Name of the contact person;

(4) Telephone number of the contact person; and,

(5) Date of the interview.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

### 240:12-7-3. Allowable expenses

The TAA job search allowance will be granted to reimburse only the applicant's expenses and not the expenses of another party or family member.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

### 240:12-7-4. Mode and time of travel

An applicant will be granted a job search allowance for subsistence and travel based on the cost of travel in the most cost effective and reasonably available mode of transportation that the individual can be expected to take and within a time period that is reasonable for the applicant to make the job search trip.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

### 240:12-7-5. Calculation of mileage

Mileage reimbursement for job search allowances will be calculated based on round-trip mileage using the most direct route from the applicant's residence to the place of job interview.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-7-6. Receipts for reimbursement**

In order to receive reimbursements for subsistence and/or transportation, an applicant must show a receipt from each vendor from which goods and services were purchased during the trip. Each receipt must show the name of the vendor and date of purchase.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-7-7. Suitable employment/employment of long-term duration**

For the purpose of making determinations regarding job search allowances and job relocation allowances only, the term "suitable employment" means suitable work as defined in 40 O.S. Sections 2-408 or 2-715, whichever is applicable, and the term "employment of long-term duration" means employment that is expected to last 182 days or more.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

## Subchapter 9 – Relocation Allowances

**240:12-9-1. Information required**

To receive a job relocation allowance, the applicant must provide a letter from his/her new employer, on the company's official letterhead, stating the following:

(1) The date the applicant was hired by the employer.
(2) The date the applicant will start work for the employer.
(3) A list of all expenses of relocation, if any, that will be paid by the employer.

[**Source:** Added at Ok Reg 1827, eff 5-27-92]

**240:12-9-2. Receipts for reimbursement**

In order to receive reimbursements for subsistence and/or transportation, an applicant must show a receipt from each vendor from which goods and services were purchased during the trip. Each receipt must show the name of the vendor and date of purchase.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-9-3. Suitable employment/employment of long-term duration**

For the purpose of making determinations regarding job search allowances and job relocation allowances only, the term "suitable employment" means suitable work as defined in 40 O.S. Sections 2-408 or 2-715, whichever is applicable, and the term "employment of long-term duration" means employment that is expected to last 182 days or more.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

**240:12-9-4. Commercial carrier**

If the applicant elects to use a commercial carrier to move his/her household goods and personal effects, he/she must use the commercial carrier designated by the OESC.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

## Subchapter 11 – Job Search Programs [RESERVED]
## Subchapter 13 – Administration

### 240:12-13-1. Determinations/appeals

Determinations regarding entitlement to TRA and TAA will be made by designated representatives of the OESC. If an applicant desires to appeal a determination made on his or her application, the appeal shall be filed with the local TRA or TAA representative or any office of the Oklahoma State Employment Service. All appeals of TRA and TAA determinations shall be considered by the Appeals Tribunal of the OESC. The appeal shall be subject to all rules and procedures of the Appeals Tribunal as set out in OAC 240:10-13.

[**Source:** Added at 9 Ok Reg 1827, eff 5-27-92]

# CHAPTER 15 – BOARD OF REVIEW PROCEDURES

## Subchapter 1 – General Provisions

### 240:15-1-1. Purpose

The Board of Review for the Oklahoma Employment Security Commission reviews the decisions of the Appeal Tribunal of the Oklahoma Employment Security Commission. This Chapter establishes the procedures which will be used for cases which are appealed to the Board of Review.

### 240:15-1-2. Definitions [RESERVED]

### 240:15-1-3. Board of Review Chairman; Vice-Chairman; quorum

The Board of Review shall designate one of its members to serve as Chairman for a period of one (1) year. The Chairman shall designate a Vice-Chairman to serve for a one (1) year term. A quorum of the Board shall consist of any two members.

### 240:15-1-4. Clerk of the Board of Review

The Clerk of the Board of Review shall administer oaths and affirmations, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of records and documents, correspondence, books, papers and memoranda deemed necessary as evidence in the review of an Appeal Tribunal decision. The Clerk of the Board of Review is further designated as the proper party upon which copies of petitions for review to the District Court shall be served.

### 240:15-1-5. Attorneys and representatives

Parties to proceedings before the Board of Review may be represented by a licensed attorney or an unlicensed representative. When a party is represented by an attorney or representative, the party shall be deemed to have received notice of hearing, correspondence, decision or order mailed by the Board of Review when these written communications are mailed to the attorney or representative.

[**Source:** Amended at 15 Ok Reg 1503, eff 5-11-98; Amended at 21 Ok Reg 780, eff 5-1-04]

### 240:15-1-6. Hearing officer–conflict of interest

No members of the Board of Review or designated Hearing Officer shall participate in decision making or conducting hearings wherein the person has a conflict of interests, bias, or prejudice.

### 240:15-1-7. Attorney fees [REVOKED]

[**Source:** Added at 21 Ok Reg 780, eff 5-1-04; Amended at 24 Ok Reg 1244, eff 5-25-07; Revoked at 25 Ok Reg 1626, eff 6-12-08]

**240:15-1-8. Attorney fees – approval**

When a claimant for unemployment benefits is represented by an attorney at law, the Board of Review must approve the fee of the attorney. Upon final disposition of the claim, the attorney for the claimant shall make a motion to the Board of Review for approval of the attorney fee. The motion must be filed with the Board of Review within one (1) year of the final disposition of the claim. The approval of the attorney fee will be on a quantum meruit basis, provided that the maximum amount of the fee shall not exceed 20% of the claimant's maximum benefit amount. It shall be the responsibility of the claimant to pay all attorney fees approved by the Board of Review.

[**Source:** Added at 25 Ok Reg 1626, eff 6-12-08]

## Subchapter 3 – Appeals to the Board of Review

**240:15-3-1. Correspondence; stamping; time; mailing**

All instruments and correspondence mailed to the Board of Review shall be stamped by the Clerk with the date of receipt. Timely filing of documents shall be calculated pursuant to the provisions of 40 O.S. Section 1-224.

[**Source:** Amended at 15 Ok Reg 1503, eff 5-11-98]

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

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

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

[**Source:** Amended at 15 Ok Reg 1503, eff 5-11-98; Amended at 26 Ok Reg 1032, eff 5-25-09; Amended at 32 Ok Reg 1742, eff 9-11-15]

**240:15-3-3. Review of Appeal Tribunal decision**

(a) Any interested party desiring to appeal the decision of the Appeal Tribunal shall file an appeal with the Board of Review. Any legible document that reflects the appealing party's desire to appeal and bears the party's signature and date shall constitute the appeal document. The appealing party shall state the reasons for the appeal in the appeal document. The appeal documents shall be filed with the Board of Review at its office in Oklahoma City, Oklahoma, within ten (10) days of the certified mailing of the Appeal Tribunal decision. Filing may be accomplished in any manner set out in 40 O.S. Section 1-224. The certificate of mailing on the Appeal Tribunal decision shall constitute

prima facie evidence of mailing and create the presumption of receipt of the decision. The Clerk of the Board of Review shall notify the nonappealing party that an appeal has been filed. No response to the appeal shall be necessary by the nonappealing party. If the appeal is to be submitted on the record, the case shall be assigned for review and decision.

(b) On appeal, the Board of Review shall have access to all documents submitted by the Commission to the Appeal Tribunal, all testimony and exhibits introduced at the Appeal Tribunal hearing, motions made by the parties and rulings thereon, and the decision of the Appeal Tribunal. After reviewing all documents and the record of the case, if the Board of Review finds that a document of the Commission is relevant and should be considered in deciding the case, although it was not introduced or entered into evidence at the original Appeal Tribunal hearing, then the Board of Review may remand the case to the Appeal Tribunal for further hearing. At the hearing, the Appeal Tribunal shall move to admit the document in question into evidence. Each party shall be given the opportunity to state its objection to the document. After hearing all objections, the Appeal Tribunal shall rule on whether the document in question should be admitted into evidence. After the hearing is closed, the Appeal Tribunal shall issue a new decision.

(c) If, at the original Appeal Tribunal hearing, any documents, exhibits, testimony or evidence of any kind was, or could have been, in the possession of the propounding party, but the propounding party failed to introduce it at the hearing and it was not included in the documents of the Commission, then it shall not be considered or made part of the record by the Board of Review, or the Appeal Tribunal on remand.

(d) If new or additional information is discovered by a party after the original Appeal Tribunal hearing and the information could not have been produced or discovered by the party before the original hearing, the Board of Review may admit the new or additional information into evidence and remand the case to the Appeal Tribunal for further hearing and a new decision in light of the new evidence. The proponent of the new or additional information shall bear the burden of proving, by a preponderance of the evidence, that the information was not, and could not have been, obtained by the propounding party before the original Appeal Tribunal hearing. The propounding party shall present his or her arguments and evidence concerning this issue in the form of a brief filed with the Board of Review. If the opposing party objects to the inclusion of the new or additional information into the evidence of the case, the objection shall be set out in a brief in response. Briefing times shall be set by order of the Board of Review.

[**Source:** Amended at 15 Ok Reg 1503, eff 5-11-98; Amended at 16 Ok Reg 1183, eff 5-13-99]

**240:15-3-4. Withdrawal of appeal**

The appealing party, with the permission of the Board, may withdraw the appeal at any time prior to a decision being rendered and the Board shall enter a dismissal of the appeal. In such case, the decision of the Appeal Tribunal shall stand as final, conclusive and binding on the parties.

**240:15-3-5. Untimely appeals; good cause; notice**

The failure to file a timely appeal from an Appeal Tribunal decision may be excused by the Board of Review for good cause shown. The question of whether there is good cause shall be determined by the Board of Review. Good cause is defined as a situation beyond the control of the parties. When an appeal is received untimely and there is no explanation for the late filing, the appellant and the appellee will be notified and the appellant will be given ten (10) days to give an explanation, after which the Board of Review will issue their opinion.

[**Source:** Amended at 15 Ok Reg 1503, eff 5-11-98]

**240:15-3-6. Certification of fact finding and questions of law from Appeal Tribunal [REVOKED]**

[**Source:** Revoked at 34 Ok Reg 1144, eff 9-11-17]

## Subchapter 5 – Hearings [REVOKED]

**240:15-5-1. Request for hearing; new additional evidence [REVOKED]**

[**Source:** Amended at 16 Ok Reg 1183, eff 5-13-99; Revoked at 28 Ok Reg 640, eff 5-12-11]

**240:15-5-2. Hearings; notice; Appeal Tribunal testimony; failure to appear [REVOKED]**

[**Source:** Revoked at 28 Ok Reg 640, eff 5-12-11]

**240:15-5-3. Continuances [REVOKED]**

[**Source:** Revoked at 28 Ok Reg 640, eff 5-12-11]

**240:15-5-4. Recording hearings [REVOKED]**

[**Source:** Revoked at 28 Ok Reg 640, eff 5-12-11]

**240:15-5-5. Cameras [REVOKED]**

[**Source:** Added at 26 Ok Reg 1032, eff 5-25-09; Revoked at 28 Ok Reg 640, eff 5-12-11]

## Subchapter 7 – Witnesses and Subpoenas

**240:15-7-1. Attendance at hearing [REVOKED]**

[**Source:** Revoked at 28 Ok Reg 640, eff 5-12-11]

## Subchapter 9 – Records of the Board of Review

**240:15-9-1. Inspection of records**

Any interested party may inspect the case file of its appeal by notifying the Clerk of the request.

**240:15-9-2. Board of Review records**

The record in an appeal filed with the Board of Review shall include the testimony and exhibits admitted into evidence by the Appeal Tribunal, motions made by the parties and rulings thereon, the decision of the Appeal Tribunal, and the decision of the Board of Review.

[**Source:** Amended at 16 Ok Reg 1183, eff 5-13-99; Amended at 28 Ok Reg 640, eff 5-12-11]

## Subchapter 11 – Appeals to District Court

**240:15-11-1. Board of Review decision; appeal to district court**

The Board of Review decision shall be based upon the record compiled by the Appeal Tribunal. Within a reasonable time, the Board shall enter a decision affirming, modifying, remanding or reversing the decision of the Appeal Tribunal. The decision shall be in writing and shall be signed by a majority of the members of the Board. Copies of the decision shall be promptly mailed by the Clerk to all parties of record in the case and shall bear appeal rights of the parties. The decision shall be final and binding unless within thirty (30) days after the mailing of the decision to the parties' last known address, a petition for review of the Board decision is filed by an interested party in a District Court pursuant to Section 2-610, Title 40 Okla. Stat. 1980.

[**Source:** Amended at 28 Ok Reg 640, eff 5-12-11; Amended at 29 Ok Reg 466, eff 5-12-12]

# CHAPTER 20 – JOB TRAINING PARTNERSHIP ACT [REVOKED]

# CHAPTER 21 – WORKFORCE INVESTMENT ACT [REVOKED]

# CHAPTER 25 – TAX EXEMPTIONS FOR QUALIFYING EMPLOYERS

## Subchapter 1 – General Provisions

### 240:25-1-1. Purpose

Title 68 O.S. Sections 1357(14) & (18), 1359(8), 2357.59(D)(2), 2902 and 54002(1) provide that the Oklahoma Employment Security Commission will certify whether an employer has met certain conditions under the above-cited sections of law. This Chapter provides procedures for employers to request the certification.

[**Source:** Amended at 15 Ok Reg 1506, eff 5-11-98; Amended at 16 Ok Reg 1186, eff 5-13-99; Amended at 18 Ok Reg 1128, eff 5-11-01]

### 240:25-1-2. Definitions

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

**"Full-time equivalent employees"** means those employees who are employed for one full year.

**"New employees"** means those employees who constitute a net increase in total employment as compared with employment levels prior to the starting date of business expansion and whose employment is directly attributable to such expansion.

## Subchapter 3 – Procedural Rules

### 240:25-3-1. Certification – new employees hired by new or expanding business

(a) **Notification to the Oklahoma Employment Security Commission.** The Oklahoma Tax Commission will notify the Oklahoma Employment Security Commission when a new or expanding business has completed a request for tax exemption.

(b) **Information required.**

(1) As soon as the requesting facility hires the required number of employees as a result of the new or expanded facility, the requesting facility shall furnish to the Oklahoma Employment Security Commission the names, Social Security numbers, job titles and starting dates of employment of each new employee.

(2) At the end of one year, the employer shall again furnish to the Oklahoma Employment Security Commission the names, Social Security numbers, job titles and starting dates of employment of employees who were hired as a result of the new or expanded facility.

(c) **Method for counting employees.** The counting of new employees shall be determined by comparing the monthly average number of full-time employees for each month during the tax exemption status with the corresponding month of the prior year as substantiated by such reports as may be required by the Oklahoma Employment Security Commission. The Oklahoma Employment Security Commission shall determine the appropriate month which is deemed most representative of meeting the requirements of the statutes.

(d) **Notice of certification to new or expanded business.** The Oklahoma Employment Security Commission will notify the employer and the Oklahoma Tax Commission by certified mail whether or not the employer has been certified as having hired the required number of full-time equivalent employees.

(e) **Appeal process.** In the event any party wishes to appeal the certification decision, the party may file an appeal with the Assessment Board. The appeals process shall be the same as that used for the normal tax assessment appeal procedures of the Oklahoma Employment Security Commission.

[**Source:** Amended at 16 Ok Reg 1186, eff 5-13-99]