



New York Unemployment Insurance Coalition

Know Your Rights: Due Process Rights* at UI Hearings

1. Notice. A notice of the hearing must be sent to both parties and it must be in the case file. The notice must list all issues that will be discussed at the hearing.

a. If the case file does not contain a Notice of the Hearing:

- This requirement is still satisfied if the ALJ, (the Administrative Law Judge who will preside at the hearing), obtained a copy of it from a party, made the notice part of the record, and obtained testimony showing that all parties received the notice.

b. If new issues are added at the hearing that were not listed in the notice:

- You have the right to request an adjournment.

2. Particularity. The initial determination denying benefits or the employer's objection should state the legal issues and or factual incidents with enough detail (particularity).

a. Requirements

- If you are accused of willful misrepresentation, the determination must include an allegation that you knew or should have known that the statement or certification was false and must specify the date that you allegedly made the false misrepresentation.
- If you are accused of failure to follow certain employer rules or procedures, those rules or procedures should be mentioned or described in the determination/objection
- If the determination/objection is vague, your case may still proceed if the requirements below are followed:
 - Showing of good cause;
 - ALJ states on the record the reason for the change;
 - ALJ informs both parties that he/she will accept new evidence;
 - ALJ informs both parties of their rights;
 - ALJ offers an opportunity to request an adjournment

3. Admission of Evidence

- Evidence on matters not raised in the initial determination or the employer's objection, cannot be considered unless the procedural steps below are observed.
 - Showing of good cause;
 - ALJ must state reason on record for changing factual basis;
 - ALJ must inform parties that the ALJ will accept the new evidence;
 - ALJ must inform parties of their rights; and
 - ALJ must offer opportunity to request an adjournment

□ As required under the MLC Consent Agreement

- However, if there is evidence that the party against whom the evidence was introduced was fully prepared to address the issue, the remedy may only require an explanation in the decision

4. Adjournment

a. If you wish to delay the hearing, you must have a good reason to do so

- Some good reasons include:
 - You have been called for jury duty;
 - You need time to meet with a representative; or
 - You need more time to gather evidence.
- You should request an adjournment ahead of time by writing or calling the ALJ section. If you do not request this in advance, you must go to the hearing and request a delay in person.

b. Good cause is not shown where

- You were already on notice to produce the document or witness, failed to do so, and the document or witness was under your control.
- In such a case, the ALJ must give a warning that a negative inference may be made for such failure and apply an adverse inference either on the record or in the decision.

c. The ALJ must grant an opportunity for adjournment where

- The Commissioner of Labor made a new or revised determination without notice to the parties
- Additional evidence (such as documents or witnesses) are necessary. An adjournment **must** be granted in this case, even if neither party requested an adjournment.

d. If you a request an adjournment but then indicate that you wish to continue with the hearing, the ALJ must take the following steps:

- Inform the party that he has the right to an adjournment to obtain the witness or document.

- Describe how the case would proceed if the adjournment were granted.

- Describe how the case would proceed if the party chose not to adjourn.

- Describe the consequences of not adjourning.

- Ascertain whether the party understands that he is giving up his right to an adjournment for the purpose stated.
- Find that the party has or has not made a voluntary, knowing and intelligent waiver of his rights and proceed accordingly.

5. If an adjournment is granted the ALJ cannot render a decision without holding another hearing or making a record to explain why the case was closed.

6. Failure to Appear and Default

a. If you did not request an adjournment and fail to appear*

[□] Information taken from FAQ section the NY DOL website:
<http://www.labor.state.ny.us/ui/claimantinfo/hearingfaq.shtm#18>

- The ALJ will hold the hearing and decide the case without hearing your side. You can apply to re-open, (by writing the NYS Department of Labor P.O. Box 15126, Albany, NY 12212-5126), however, you must give a reason for why you did not appear.

- If the judge finds that you had good cause for not attending, your case will be re-opened.

b. If the Employer fails to appear

- The ALJ will hold the hearing and decide the case without hearing the employer's side. The employer can re-open if there is a good reason for missing the hearing.

c. Employer Objection cases

- If the employer objects to the claim and fails to appear at the hearing, the ALJ must enter a default.

7. The ALJ Must Read the Following Statement:

- *This statement is Checklist item 7, but is not contained on the MLC Consent agreement.*

8. The file must contain all documents upon which the initial determination was based

- If the case involves a determination of willful misrepresentation based on a written document(s) submitted to the DOL, the document(s) must be included in the file. The file must also contain documentation showing the amount of recoverable overpayment.

- If the ALJ is not able to obtain the underlying document(s) after making an attempt to do so, the initial determination should be overruled for lack of proof.

- However, if the document is produced during the hearing, it is to be made part of the record after the parties have received notice and have reviewed the document.

- If a party admits to certain facts contained in an initial determination (such as the amount of the overpayment), then the underlying document is not needed.

9. The ALJ must confront the parties with documents and reports considered or relied upon to decide the case

- Confrontation includes (but is not limited to), providing a description of the document, the number of pages, identifying signatures or sources of the document, how the document was prepared, wording and who controlled such wording.

10. The ALJ must accept into the record any document on which it considered or relied upon to decide the case

11. The ALJ must offer all parties the opportunity to cross-examine a witness who testified for another party

- This right exists even if the other party's witness testified to the benefit of the opposing party.

12. If you have difficulty with the cross examination, the ALJ must offer assistance

- Specifically, the ALJ must explain how to frame a question and offer you the chance to do so. If you are unable to, the ALJ must convert declaratory statements into questions.
- If these attempts were made, yet the party is still unable to conduct a proper cross examination, the ALJ may move on to the next witness.
- If the ALJ asks questions for a party unable to do conduct a cross examination, the ALJ's questions must not create an appearance of bias.

13. The ALJ must offer all parties the opportunity to make a closing statement

- It is sufficient if all the ALJ asks is "anything else?" As long as the parties understood that they had the right to explain material and relevant points they feel were not brought out or to clarify those raised at the hearing, this requirement is satisfied.

14. A Spanish translator must be provided when needed by a party or witness.

15. If a translator is needed for any language other than Spanish, the Appeal Board must assist the party in finding a translator.

16. If a party/witness needs a Spanish translator, the entire proceeding or a relevant part of a document must be translated.

17. If you claim that there was a language problem and the ALJ determined that such problem was not a deciding factor, the ALJ's decision must give specific reasons for that conclusion.

- The rule is limited to Spanish speaking claimants.

18. The ALJ must act impartially in conducting the hearing.

19. The ALJ must give greater weight to sworn, credible testimony as opposed to hearsay.

20. The minutes of any hearing where testimony and evidence is taken must be transcribed.

21. The testimonial evidence must be sufficiently developed to render an informed decision on all issues that must be ruled upon.

- The ALJ must assure that the "who, what, when, where and how" type of testimonial evidence is developed on all issues that must be ruled upon.
- The ALJ must assure that the testimonial evidence is clear, free from confusion, and sufficient to ascertain material facts or determine credibility.