

Questions and Answers About Your Unemployment Insurance Benefits Hearing

This pamphlet answers basic questions about your unemployment insurance benefits hearing. It explains how you should prepare for the hearing and what rights you have at the hearing.

Si le gustaría obtener una copia de este folleto en el español, comuníquese con el Central Telefónico de Reclamos o a la Sección del Juez de Derecho Administrativo (Administrative Law Judge Section) donde ocurrirá su audiencia.

Can I delay the hearing?

Yes. You may “adjourn” (delay) the hearing if you have a good reason. You must explain the reason to the ALJ and the ALJ will decide whether or not it is adequate. Examples of good reasons are:

1. You have an emergency.
2. You want a lawyer and haven’t been able to get one.
3. You haven’t been able to meet your lawyer.
4. You need more time to gather evidence.

If possible, you should ask for a delay before the hearing date by writing or calling the ALJ Section. If the ALJ does not grant a delay before the hearing, you must go to your hearing and request a delay in person. If you can’t go yourself, you may send a representative along with a signed explanation as to why you could not attend. If the ALJ denies your request for a delay, the ALJ will hold the hearing.

What happens if I miss a hearing?

If you miss the hearing, the ALJ may hold the hearing without you and decide your case without considering your side of the story.

If you miss the hearing for a good reason (e.g., you had a medical emergency or no legal representation), you should apply to the DOL to reopen your case, so that the ALJ can hear your side of the story. If the ALJ finds that you had a good reason, s/he will reopen it.

What happens if your former employer misses a hearing?

If you request the hearing but your former employer misses it, the ALJ may hold the hearing and decide your case without considering their side of the story. After the hearing, your former employer may apply to reopen the case. If the ALJ finds that your former employer had a good reason, s/he will reopen it.

If your former employer requests the hearing but misses it, then the ALJ will automatically decide the case in your favor.

When will I receive the ALJ’s decision?

You should receive a decision within three weeks. If you do not, you should call the DOL or the ALJ Section where you had your hearing (the phone number is on the Notice of Hearing).

What if I disagree with the ALJ’s decision?

You can appeal the ALJ’s decision. An appeal is a formal request to a “higher” level, called the **Appeal Board** to review whether the ALJ’s decision is correct. You can request an appeal either by 1) submitting a completed form to the Appeal Board, or 2) sending a letter to the DOL stating that you wish to appeal the decision. Your request must be postmarked within 20 days of the date stamped on the ALJ’s decision.

Your former employer may also appeal. If you did not appear at the hearing, you may not appeal the ALJ’s decision, but you may request that the ALJ reopen your case.

What happens when a decision is appealed?

After you submit your request for an appeal, you may submit a written statement to the Appeal Board which explains why the ALJ’s decision is wrong. An attorney or someone else can help you prepare your statement. Your former employer will also be allowed to submit a statement.

Before you submit your statement, you should review the transcript of your hearing. (The transcript is the written record of everything said at the hearing.) You can get the transcript by writing to the Appeal Board after you receive a “Notice of Receipt of Appeal” and before your statement is due. You should ask the Appeal Board on what date the transcript will be ready and whether you can submit your statement twenty days after that date. If the Appeal Board finds that there was a problem with your hearing, it will send your case back to the ALJ for another hearing or it will hold a hearing itself. If the Appeal Board decides that the ALJ’s decision was wrong, it will overturn the decision.

What if I win but my former employer appeals?

Your former employer (or the DOL) may appeal a decision decided in your favor. You can submit a written statement opposing the appeal. If you do submit such a statement, you have the same rights as if you had lost the hearing and brought an appeal yourself. For example, you may review the transcript and/or consult an attorney.

If the Appeal Board overturns a decision in your favor, you may have to repay your benefits.

What is a hearing?

A hearing is an informal trial held to determine whether or not you are entitled to unemployment insurance (“UI”) benefits. It is conducted by an Administrative Law Judge (“ALJ”) at the New York State Department of Labor (“DOL”).

Who is the Administrative Law Judge?

The Administrative Law Judge, also called an ALJ, is an employee of the UI Appeal Board of the DOL. The ALJ must ensure that all parties have a fair chance to be heard, present evidence, and get a fair decision. After the hearing, the ALJ will issue a decision about whether or not you are entitled to UI benefits.

Why have a hearing?

You can request a hearing to challenge the DOL’s decision to deny your benefits. The DOL will notify you of the decision and the reason for the denial by mail in a “Notice of Determination.” If you disagree with the reason, you may request a hearing by sending a letter to the DOL. Your request must be postmarked within 30 days of the date on the Notice of Determination.

Your former employer can request a hearing to object to the DOL’s decision to grant your benefits. This hearing is held to determine whether your former employer’s objection is correct.

Who can attend the hearing?

- You and someone who can help you present your case. This person can be a lawyer, an authorized agent, union representative, or just a friend.
- Your former employer or their representative(s), which may include a lawyer.
- You and your former employer both have the right to bring witnesses.
- The DOL may send a representative to defend its decision.

Can I examine my file before the hearing?

Yes. At any time before the hearing, you may call the ALJ Section to arrange to see your file.

What should I bring to the hearing?

You should bring any papers you have received from the UI Division of the DOL. You should also bring any papers or other evidence that will support your position such as contracts, letters, pay stubs, arbitration decisions, collective bargaining agreements, employee handbooks or manuals, doctor’s notes, and photographs.

During the hearing, you should ask the ALJ to accept these papers into the record. In deciding your case, the ALJ can consider only those papers or other evidence identified at the hearing and accepted into the record after the other side had an opportunity to review them.

Your former employer can also ask the ALJ to accept evidence and the ALJ can admit papers from your file into the record. You have the right to review any evidence before the ALJ accepts it for the record.

What happens at a hearing?

To begin the hearing, the ALJ will identify the parties and the issues to be addressed at the hearing. The ALJ may then ask questions of you, your former employer, and any witnesses either side may have.

The ALJ may hear your former employer’s side of the story first. All testimony will be tape-recorded and taken under oath. Either side can present papers or other physical evidence.

You, your former employer, and your respective lawyer(s) or representative(s), may also ask questions of any witnesses. This is called “cross-examination.” If you have trouble, you can ask the ALJ for help.

During the hearing, the ALJ may decide to consider new questions about your case not identified in the “Notice of Determination” or the employer’s objections. If new questions are considered, the ALJ must have a good reason for considering them and must explain that to you. If you are not prepared to discuss a new question, you have a right to “adjourn” (delay) your hearing to prepare.

At the end of the hearing, both you and your former employer can give closing statements summarizing your arguments.

Can I bring witnesses?

Yes. You can bring any individual(s) to the hearing that can provide information to the ALJ that supports your position. Your former employer may also bring witnesses. You, your former employer, and the ALJ will be able to question all witnesses.

What if I can’t get the evidence or witnesses I need?

If you need a document, or other evidence, which will help you prove your case, but you can’t get it from the person who has it, the ALJ can help you. The ALJ can force the person who has the evidence to deliver it by issuing a paper to them called a “Subpoena.” (Sa-pee-na). You can ask the ALJ to issue a subpoena and if they grant your request, the ALJ will delay the hearing so that the subpoena can be delivered.

Similarly, if you need an important witness to come to your hearing, but the witness refuses, you can ask the ALJ to force the witness to appear by issuing a subpoena. Again, this will cause the hearing to be delayed.

If you don’t need an ALJ’s help to get a paper or witness, but you need time to get it, you can ask the ALJ for more time. The ALJ will only give you more time if you have a good reason for requesting it.

If you have a witness who is willing to testify but cannot, for whatever reason, come to the hearing, you can ask the ALJ to permit the witness to testify by telephone.

Your former employer and the DOL have the same rights to get evidence or witnesses.

Can I bring a lawyer or someone to help me?

Yes. You can bring a lawyer or anyone else to the hearing to help you. If you can’t afford to hire a lawyer, you may be able to get one free through your local Legal Aid Society or Legal Services office. Only a lawyer or a registered agent can charge a fee to help you (and then only if you win). Anyone can help you who does not charge a fee. Your former employer can also bring a lawyer or agent.