

OFFICE OF ADMINISTRATIVE HEARINGS
RESOURCE CENTER

UNEMPLOYMENT INSURANCE APPEALS



OAH's Mission

The District of Columbia Office of Administrative Hearings (OAH) is an administrative court with 33 Administrative Law Judges that decide contested cases from more than 40 District agencies, boards and commissions. The independent agency is a neutral, impartial tribunal that holds hearings and decides appeals from various agency decisions. OAH's docket includes cases involving unemployment compensation, Medicaid and other public benefits, public space, rent control, professional and business licenses, and building, health and fire code violations. OAH enhances the quality of life in our city by providing residents with a fair, efficient and effective system to manage and resolve administrative litigation arising under District of Columbia law.

Disclaimer

This information is provided as a service to assist parties in learning more about the hearings process in the Office of Administrative Hearings (OAH). This guide does not give legal advice. You can only obtain legal advice from a lawyer.

The OAH Resource Center makes every effort to keep informational materials, such as this guide, up-to-date, but laws and procedures change frequently. Therefore, OAH does not guarantee the accuracy of this information.

Anyone seeking the full text of procedures applicable at OAH should consult 1 DCMR Chapters 28 and 29, available online at <http://oah.dc.gov> and in print at OAH.

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Introduction

What is unemployment compensation?

The District of Columbia gives unemployment compensation benefits to workers who become unemployed through no fault of their own, and who are ready, willing and medically able to work. The money for benefits generally comes from payroll taxes paid by employers.

The Department of Employment Services (DOES) administers the Unemployment Compensation benefits program, and decides which former employees meet the legal requirements to qualify to receive benefits. DOES makes these decisions after getting information from the former employee and employer. DOES then mails both of them a notice of its decision, and their rights to challenge it if they disagree.

What can I do if I disagree with the DOES determination?

If either the former employee or the employer disagrees with the DOES decision, either can appeal the DOES decision to OAH for a hearing before an administrative law judge.

Do I need a lawyer?

You're allowed – but not required – to have a lawyer at your hearing. Information about getting free legal advice can be obtained from the OAH Resource Center and is also provided with the Scheduling Order you receive from OAH when a hearing date is set.

Free legal advice is available for employers and for employees who cannot afford counsel. You should try to contact a lawyer for advice or an appointment as soon as possible before your hearing. A lawyer probably will not be able to represent you if you call at the last minute.

Employers can contact the Employer Advocacy Program (EAP) to apply for representation. EAP can be reached at 202-638-6761.

Claimants can contact the Claimant Advocacy Program (CAP) to apply for representation. CAP requires claimants to call **after the hearing is scheduled but no less than 5 days before the hearing**. CAP can be reached at 202-974-8150.

At your request – and with limited availability – the OAH Resource Center may also be able to refer you to a lawyer for possible representation. Please understand that the OAH Resource Center can never **guarantee** that you will receive representation.

I don't speak English. Can I get an interpreter?

If you communicate in a language other than spoken English and need an interpreter, OAH will provide one free of charge. Please inform OAH as soon as possible. If you are not sure if you need an interpreter, please request one anyway. Unfortunately, you cannot have a friend, family member, or another party in the case interpret for you.

Qualification Requirements for Employees

PLEASE NOTE: This section purposefully simplifies the applicable law in an effort to make it easier to understand. Please consult DOES's *District of Columbia Unemployment Insurance* booklets (available at the OAH Resource Center) or consult a lawyer (see p. 2) for more complete information.

Can I get unemployment if I was terminated for misconduct?

The law in DC establishes two different kinds of misconduct: (1) gross misconduct and (2) misconduct other than gross.

If an employee was terminated for gross misconduct, she may not be qualified for benefits. If an employee was terminated for misconduct other than gross misconduct, she may not be qualified for benefits **for a certain period of time**.

Can I get unemployment if I voluntarily quit?

If an employee voluntarily left employment without good cause connected to the work, she may not be qualified for unemployment benefits.

The burden of proof in voluntary quit cases is different than the usual. Here, the employer has to prove that the employee left voluntarily. If the employer succeeds, the employee then has to prove she had good cause connected with the work to have left voluntarily.

Can I get unemployment if I lost my job due to domestic violence?

If an employee loses a job due to domestic violence, he or she may still be qualified for benefits. If it is determined that the employee lost the job due to domestic violence, the weekly benefits will not be charged to the employer.

To support a claim of domestic violence, an employee must submit one of the following: a police report of record; a government agency or court record; or a written statement from a shelter official, social worker, counselor, therapist, attorney, medical doctor or clergy member.

Eligibility Requirements for Employees

PLEASE NOTE: This section purposefully simplifies the applicable law in an effort to make it easier to understand. Please consult DOES's *District of Columbia Unemployment Insurance* booklets (available at the OAH Resource Center) or consult a lawyer (see p. 2) for more complete information.

If I am “qualified” for unemployment, is there anything else I need?

Even if a claimant is a former employee who is **qualified** to receive benefits because she became unemployed through no fault of her own, she is **not automatically eligible** for unemployment. Claimants also must earn wages in a specific 12-month period

before becoming unemployed to be eligible for benefits. DOES calculates a claimants' wage eligibility by looking at the wages in those months.

Are there any other eligibility requirements?

Yes. Claimants must be available to work. Claimants must be ready and willing to accept work which is suitable for them based on experience and education.

- A claimant must make at least two job contacts per week.
- A claimant must be physically able to work. Claimants cannot collect unemployment compensation benefits while they are sick, injured or disabled.
- A claimant must not be receiving unemployment compensation benefits from any other state.
- A claimant must submit weekly claim forms to DOES on time.

Reduction, Overpayment & Fraud

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Once set, can a weekly benefit amount ever be reduced?

A weekly benefit amount may be reduced for the following reasons: if a claimant (1) receives severance pay; (2) owes child support; and (3) earns money from any work (including self-employment). The weekly benefit amount may also be reduced if a claimant receives a pension, **but only if** the claimant has made no financial contribution at all. If a contribution to the pension has been made

(for example, like a social security pension), then there will be no reduction.

What can happen if unemployment pays more than they were supposed to pay?

If a claimant receives unemployment payments to which she is not entitled, she has been overpaid. Some of the most common reasons for overpayment are: (1) claimant’s failure to report earnings; (2) incorrectly reporting earnings; (3) back pay received for the same time claimant received unemployment; (4) a ruling from OAH overturning an earlier decision granting unemployment benefits; and (5) continuing to file for unemployment after a claimant has returned to full-time work.

What can happen if I lie or omit something regarding my unemployment?

If a claimant knowingly makes false statements or withholds important information in order to obtain or increase unemployment payments, she may be disqualified for up to one (1) year beyond her unemployment end date. She may also be subject to criminal prosecution for fraud which could result in jail time.

Time Limits for Filing an Appeal

When do I have to file my appeal?

If DOES mailed the Determination to you, you must file your hearing request within 15 calendar days of the date DOES mailed it. The time runs from the date that DOES mailed the Determination to you, **NOT** the date that you actually received it. The mailing date is usually shown on the first page of the Determination. If DOES used the wrong address when it mailed the Determination to you, you must file a hearing request within 15 calendar days of the date you actually receive the Determination.

In general, if the postmark on the DOES envelope in which the Determination was mailed to you is different from the date on the first page of the Determination, then the 15 calendar days run from

the postmark date, so you should **save the envelope** and bring it with you to your hearing.

If the 15-day filing deadline falls on a Saturday, Sunday, or a legal holiday, the filing deadline is extended to the next business day.

If you miss the deadline, the judge may be able to make an exception for you if you can prove that you had a good reason for filing late. You must come to the hearing prepared to show with evidence and testimony that you had a good reason.

Who has to prove that the appeal was filed on time?

The party filing the appeal with OAH must prove that the appeal was filed on time.

Should claimants keep filing claim forms with DOES?

If you are the claimant and you are appealing a decision, you should still continue to file claim forms with DOES while you wait for a hearing at OAH.

Evidence and Burden of Proof

Who must prove the case to win?

The law sets out whether it's the employer or the employee who must prove the case to win. Whichever side has to prove its case has the "burden of proof." The burden of proof depends on the facts of the case.

Sometimes the issue in an unemployment case is the reason the employee is out of work. The reason that the employee is out of work is what decides whether the employee is **qualified** for benefits. If DOES believes that the employee isn't qualified for benefits and the employee appeals to OAH, then it's the **employer** who has to prove that the employee isn't qualified. In those cases, the employer has the burden of proof.

Sometimes the issue in an unemployment case is whether the employee earned sufficient wages, or is filing the claim forms on time, or is medically able to work. These things all help decide whether the employee is **eligible** for benefits. (**NOTE:** These things are not the only details necessary to decide whether an employee is eligible.) If DOES believes that an employee is ineligible – but not disqualified – from receiving unemployment benefits, the **employee** has to prove that she is eligible. In those cases, the employee has the burden of proof.

The parties may submit evidence to OAH in the form of in person or telephonic sworn testimony by themselves or other witnesses and/or documents or other exhibits.

Can I bring witnesses?

If other people have evidence directly relevant to the issues, you may ask them to come to the hearing and testify. If the witnesses aren't willing to come to the hearing, you may request a subpoena. A subpoena is an order to require the witness to come and testify. In unemployment insurance cases, you can receive up to three subpoenas from the Clerk's Office without asking a judge for them.

Can I bring documents or other evidence?

If you can have written documents, photographs, videos or other items that will help you to prove your case, you may ask the judge to look at them during the hearing and make them part of the formal record of the case. You may also ask the judge to watch or listen to a recording of the event.

Give your evidence and witness list to the other side.

You must follow the directions in your Scheduling Order. Send copies of the evidence to the other side and to OAH **BEFORE** the hearing. Both sides must share their evidence and their witness lists before the hearing. This is so no one will be surprised by the evidence at the hearing. The judge may not allow you to present any evidence which you didn't show the other side before the hearing.

The OAH Resource Center has other guidebooks and materials available that discuss submitting evidence, the hearing process, and other topics.



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