

## **Title 10 - DEPARTMENT OF ADMINISTRATIVE SERVICES- SOCIAL SECURITY BUREAU**

### **Chapter 1 - ELECTION OFFICIAL EXCLUSION**

**001** Wages of less than \$50.00 paid in any one quarter to election officials or election workers are excluded wages.

Annotation:

Section 68-603, R.R.S. 1943

Modification No. 221, dated August 13, 1970, which amends the Federal/State Social Security Agreement, dated June 20, 1951.

# **Title 10 - DEPARTMENT OF ADMINISTRATIVE SERVICES & SOCIAL SECURITY BUREAU**

## **Chapter 2 - STUDENT EXCLUSION**

**001** Wages paid for services performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at said school, college or university are excluded wages. Wages paid for services rendered during summer vacation when the student is not attending classes are not excluded wages.

Annotation:

Section 68-603, R.R.S. 1943

Modification No. 269, dated December 18, 1972, which amends the Federal/State Social Security Agreement, dated June 20, 1951.

# **Title 10 - DEPARTMENT OF ADMINISTRATIVE SERVICES & SOCIAL SECURITY BUREAU**

## **Chapter 3 - DUE DATES**

**001** The interim wage report shall be the completed Entity Transactions form. The interim wage report for the period from the first day through the fifteenth day of the month and the appropriate contribution payable therewith shall be due in the office of the Social Security Bureau no later than the twentieth day of the same month. The interim wage report for the period from the sixteenth day through the last day of the month and the appropriate contribution payable therewith shall be due in the office of the Social Security Bureau no later than the fifth day of the following month. Thereafter, such interim wage report and/or contribution shall be considered delinquent and subject to an interest assessment computed on the amount of contribution due at an annual rate established by the Federal Social Security Administration with a minimum interest assessment of \$5.00. If the due date falls on a Saturday or Sunday or State holiday, the interim wage report and contribution shall be due on the next business day. An interim wage report and contribution shall be considered submitted timely if they are placed in the United States mail and postmarked no later than the due date.

**002** The annual wage report shall be the State Social Security Administrator's copy of the Form W-3 S&L, Transmittal of Income and Tax Statements for State and Local Governmental Employers. The annual wage report shall be due in the office of the Social Security Bureau no later than the twenty-eighth day of the second month following the calendar year for which the report is being submitted. Thereafter, such annual wage report shall be considered delinquent. If the due date falls on a Saturday or Sunday or State holiday, the annual wage report shall be due on the next business day. An annual wage report shall be considered submitted timely if it is placed in the United States mail and postmarked no later than the due date.

Annotation:

Section 68-608, R.R.S. 1943 (Wage Reports)  
Section 68-610, R.R.S. 1943 (Contributions)

# **Title 10 - DEPARTMENT OF ADMINISTRATIVE SERVICES & SOCIAL SECURITY BUREAU**

## **Chapter 4 - RECORD INSPECTION**

**001** All accounting records of the State and of all political subdivisions of the State included under an agreement shall be kept at locations accessible to and open for inspection by authorized officials of the Social Security Bureau. Said records shall be retained for a period of at least four years from date of origin.

Annotation:

Section 68-608, R.R.S. 1943

# **TITLE 10 - DEPARTMENT OF ADMINISTRATIVE SERVICES, ADMINISTRATION**

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# DEPARTMENT OF ADMINISTRATIVE SERVICES

## Title 10 - DEPARTMENT OF ADMINISTRATIVE SERVICES, ADMINISTRATION

### Chapter 20 - RULES OF PRACTICE AND PROCEDURE

#### 20-001 Scope and Application

001-01 These rules govern the practice and procedure before the Department of Administrative Services under authority of Sections 77-2406 through 77-2410, Sections 81-112, 81-113, 81-119, 81-129, 81-133, Sections 81-1101 through 81-1169, Sections 84-306 through 84-309, R.R.S. 1943; and as required by the Administrative Procedure Act, Section 84-901 et seq. (Reissue 1981).

#### 20-002 Definitions

002.01 Director - Director of Administrative Services and State Director Administrative Services or his authorized representative shall mean the Nebraska Department of Administrative Services, unless the context requires otherwise.

002.02 Hearing Officer - Hearing Officer shall mean the Director Administrative Services or his authorized representative who shall preside over proceedings before the Department of Administrative Services.

002.03 Claim - Claim shall mean a written request or demand for payment or other compensation from the State of Nebraska or state agency filed with the Department of Administrative Services.

002.04 Claimant - Claimant shall mean the person or persons, corporation, or partnership, and their attorney or other representative who files a claim for any determination before the Director Administrative Services.

002.05 Proceeding - Proceeding shall mean all matters formally or informally conducted by and subject to the authority and jurisdiction of the Department of Administrative Services. Proceedings shall include but not be limited to the following:

002.05A Proceedings related to the promulgation, amendment or repeal of rules and regulations of the Department;

002.05B Contested cases (claim proceedings);

002.05C Investigative Proceedings;

002.05D Proceedings involving declaratory judgment with respect to any rule or statute subject to the authority or jurisdiction of the Department of Administrative Services.

002.06 Attorney General - Attorney General shall mean the Attorney General of the State of Nebraska and his Deputy Attorney General, Claims Division, or any other attorney designated by either of them to act on their behalf to investigate, negotiate, try or in any other manner represent the State of Nebraska or its agencies.

002.07 Agency - Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of State government, but shall not include corporations that are essentially private corporations. State agency shall not be construed to include any contractor with the State of Nebraska.

(Sections 77-2406 through 77-2410, Section 81-119, Sections 84-306 through 84-309, and 84-909, R.R.S. 1943.)

### **20-003 The Office of the Nebraska Department of Administrative Services**

003.01 Location - The office of the Department is located on the first floor of the State Capitol Building, Lincoln, Nebraska.

003.02 Mailing Address - The mailing address of the Department is as follows:

Department of Administrative Services  
P.O. Box 94664  
Lincoln, NE 68509-4664

003.03 Official Hours - Official hours of the Department are from 8:00 a.m. to 5:00 p.m., Monday through Friday. Official hours shall not include Saturdays, Sundays or legal holidays. Official acts shall only be performed during official hours. When the filing of any document or the doing of any act is required on or before a certain date which falls during non-official hours, the date for filing shall be extended to the next succeeding date which falls within official hours.

(Sections 81-113 and 84-909, R.R.S. 1943.)

### **20-004 Filing Requirements**

004.01 Method - Pleadings, documents and correspondence required to be filed with the Department shall be deemed to be properly filed in accordance with these rules when they are:

004.01A Delivered to the Department;

004.01B Mailed to the Department by certified mail, return receipt requested; or

004.01C Mailed to the Department by regular mail and actually received by the Department.

004.02 Withdrawal - Any party making a filing with the Department may not withdraw the filing without approval of the Director.

004.03 Amendment - Pleadings, documents and correspondence filed with the Department may be amended by the party making the filing, providing such amendment would not prejudice any party and provided further, that the Director approves such amendment.

(Sections 81-112 and 84-909, R.R.S. 1943)

### **20-005 Proceedings Relating to the Promulgation, Amendment or Repeal of Rules and Regulations of the Department.**

005.01 Submission of Petition - Any person may, by petition, request the Department to promulgate, amend or repeal any rule or regulation subject to the authority and jurisdiction of the Department.

005.02 Consideration of Petition - The Director shall give consideration to all petitions submitted to him and shall determine if the proposed rule change is within the statutory authority and jurisdiction of the Department. If the proposed rule change is within the statutory authority and jurisdiction of the Department, the Director shall, within ninety (90) days of the filing of the petition, set the matter for hearing. If the proposed rule change is not within the statutory authority and jurisdiction of the Department, the matter shall not be set for hearing. The Director shall, within thirty (30) days of the filing of the petition, notify petitioner as to whether a hearing will be conducted on the proposed change, giving reasons in support of his decision.

005.03 Hearings on the Promulgation, Amendment or Repeal of Rules and Regulations of the Department.

005.03A Record - Hearings shall be conducted by a Hearing Officer. An official record need not be prepared, but sufficient notations should be made of the proceedings so as to allow the Hearing Officer to prepare an accurate report of the hearing.

005.03B Evidence and Procedure - The admission of testimony evidence at the hearing shall not be governed by the formal rules of evidence. The Hearing Officer shall admit and give probative effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. The Hearing Officer may utilize his experience and specialized knowledge in the evaluation of the testimony and evidence presented. The Hearing Officer shall rule on any motions or objections presented and may interrogate any witnesses. Members of the Department Staff may also, with the approval of the Hearing Officer, present testimony and evidence and interrogate any witnesses.

005.04 Disposition and Consideration of Petition - After the hearing, the Director shall make a determination as to the advisability and necessity of the proposed rule change. Considerations by the Director shall include but not be limited to the following:

005.04A The benefits to be gained by the people of the State of Nebraska;

005.04B The benefits to be gained by the Department in its administration and regulation of the laws within its jurisdiction.

005.05 Implementation of Rule Change - If the Director determines that the rule change shall be implemented, he shall cause the rule change to be adopted.

005.06 Notification - Petitioner shall be notified within thirty (30) days of the hearing, of the Director's decision as to whether the proposed rule change will be adopted. Such notification shall include reasons in support of the Director's decision.

(Sections 81-112, 81-1167, 84-909 and 84-910, R.R.S. 1943.)

## **20-006 Procedure Governing Contested Cases (Claims)**

006.01 These rules shall be followed by a claimant filing a claim with the Director Administrative Services.

006.01A Any claim filed with the Director shall identify the claimant, identify the damage, loss, or injury and cause thereof with facts sufficient to acquaint the Director of the exact basis thereof, state the relief demanded, and be signed and dated by claimant.

006.01B The claimant may represent himself or he may be represented by a duly authorized representative. If the claimant is a State agency, the agency may be represented by its duly authorized representative, agency counsel, or in appropriate circumstances, by the Attorney general. The State of Nebraska may be represented by any agency counsel, or by the Attorney General in appropriate circumstances.

006.01C A claim must be filed by the claimant within two years after such claim shall accrue.

006.01D A claimant may, at any time up to or during the proceeding, amend his claim. The request to prepare, or receipt of, an amended claim shall be considered good cause for a continuance and the Hearing Officer, on his own motion or on any motion of the parties, may continue the hearing. If a continuance is granted, a copy of such order shall be directed to all parties.

006.01E The Director shall grant a claimant or his authorized representative an opportunity for an oral hearing if the claimant so requests.

006.02 Prehearing Procedure

006.02A Any party may request that an informal conference be held for the purpose of resolving issues of fact and attempting to resolve the matter in whole or in part, or otherwise assisting in the preparation of a hearing.

006.02B All parties to a hearing may stipulate as to facts or evidence to facilitate complete or qualified agreement concerning all material facts that are not or should not be in dispute.

006.03 Procedure for Hearing Before the Director

006.03A The time and place of any hearing shall be set by the Director or his authorized representative after proceedings have commenced. Written notice of the time and place of any hearing shall be given by certified mail, return receipt requested, at least ten (10) days prior to the date of hearing unless notice is waived by the parties in writing.

006.03B Motions may be filed with the Director by any party or upon the Director's own motion as soon as either party becomes aware of facts requiring the motion. The motion must state specifically the facts as to why it is necessary. A hearing on the motion will be set unless both parties consent to the motion.

006.03C Types of motions which may be made by either party include but are not limited to:

006.03C(1) Motions for continuance;

006.03C(2) Motion for dismissal which may be made on the grounds of lack of jurisdiction, failure to state a cause of action, or failure to comply with these Rules of Practice and Procedure.

006.03C(3) Motion for default judgment may be filed and may be sustained whenever the party having the burden of proof fails to appear at the hearing.

006.03C(4) Motion for consolidation is appropriate when the same claimant has filed separate claims, or different claimants filing claims with the same issue(s) or on the same set of facts particularly when represented by the same attorney or other representative.

006.03D The hearing shall be conducted by a Hearing Officer who shall open the proceedings, take appearances, administer oaths, and subpoena witnesses and records; hear the evidence and rule on motions and objections; interrogate witnesses; and close the proceedings. If the claimant is not qualified to make an appearance, the Hearing Officer shall explain to the claimant the Rules of Practice and Procedure and generally conduct

the hearing in a less formal manner to allow the claimant to fairly present his evidence, testimony and arguments.

006.03E The Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted among reasonably prudent men in the conduct of their own affairs. Incompetent, irrelevant, immaterial, and unduly repetition evidence may be excluded.

006.03F A copy of any book, record, paper, or document may be offered directly in evidence in lieu of the original, where the original is unavailable or where there is no objection, and where the original is admitted in evidence, a copy may be substituted later for the original or such part thereof as may be material or relevant upon leave granted in the discretion of the Hearing Officer.

006.03G Any party may request that the proceeding be bound by the rules of evidence applicable in a District Court of Nebraska. Such party shall file with the Hearing Officer, at least three (3) days prior to the date of the scheduled hearing, a written request that the hearing be so conducted. The request for application of District Court rules shall be in writing and include an agreement by the requesting party that he shall procure at his own cost and on his own initiative, the court reporting services for the hearing.

006.03H The Hearing Officer may take note of judicially recognizable facts and of general, technical, or scientific facts within the specialized knowledge of the Director's Office.

006.03I In any hearing, every party thereto shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. Opportunity shall be afforded every party to present evidence and testimony as rebuttal to evidence presented by any other party.

006.03J The parties shall be prepared to make oral argument as to the law at the conclusion of the hearing. A written memorandum of law or brief may be filed at the time of the hearing at the discretion of any party or at a subsequent time if the Hearing Officer so permits.

006.03K The burden of proof in any proceeding shall be on the claimant.

006.04 Record - The claimant may request and obtain a certified copy of the record of the hearing. Charges for preparing the certified copy shall be paid by the party requesting it. Testimony in any hearing may be taken by tape recording. The official record shall consist of the exhibits and transcription of said recording, except where a party has requested that the District Court rules of evidence apply to a hearing.

006.05 Findings and Order of Director - Notification of the Findings and Order of the Director shall be served on the claimant. Notice shall be in writing and shall state the findings of fact and

conclusions of law reached by the Director. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. The claimant may initiate an appeal after service of process is made on the Director's Findings and Order. If service is by certified mail, return receipt requested, service upon the claimant will be considered to have been completed as of the date of deposit in the United State Post Office. If notice is served personally, service upon the claimant will be considered to have been completed as of the date of delivery.

006.06 Disposition of Exhibits - After a Findings and Order has become final, either party desiring the return, at his own expense, of any exhibit belonging to him shall make application in writing to the Hearing Officer within thirty (30) days suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the Hearing Officer deems advisable.

(Sections 81-112, 84-306 through 84-309, 77-2406 through 77-2410, 84-909, 84-913 and 84-914, R.R.S. 1943.)

## **20-007 Investigative Proceedings**

007.01 Investigation - The Department, through the Director, may at any time on its own motion conduct any investigation necessary to the proper performance of the Department's duties or to assist in determination of any matters before the Director within the authority and jurisdiction of the Department.

007.02 Hearings - Hearings conducted as part of an investigative proceeding shall be conducted by a Hearing Officer. Witnesses called upon to testify may be required to testify under oath. An official record shall be reported at all hearings conducted as part of an investigative proceeding.

007.03 Evidence and Procedure - The admission of testimony and evidence at investigative hearings shall not be governed by the formal rules of evidence. The Hearing Officer shall admit and give probative effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. Testimony and evidence of investigative hearing may be given by the Director, Department staff, or by witnesses. Witnesses may be interrogated by the Hearing Officer, the Director, or by Department staff with approval of the Director. The Hearing Officer shall rule on any motions or objections presented at the hearing.

007.04 Notice to Witnesses - Witnesses called upon to testify at investigative hearings shall be notified of the hearings at least ten (10) days prior to the date set for hearing either by certified mail, return receipt requested, or by personal delivery of service.

(Sections 81-112, 81-119, 81-129, 81-133, 81-1107, 84-307, 84-909 and 84-910, R.R.S. 1943.)

## **20-008 Declaratory Rulings Procedure**

008.01 Petition - Any interested person may petition for request of the Department to issue a declaratory ruling with respect to the applicability to a person, property, or state

of facts of any rule or statute subject to the authority or jurisdiction of the Department. Whenever declaratory ruling is sought with respect to the constitutionality or validity of any rule or statute enforceable by the Director, the Attorney General of the State of Nebraska shall be served a copy of the petition.

008.02 Consideration of Petition - The Director shall give consideration to all petitions submitted to him and shall make the following determinations:

008.02A Whether the rule or statute, which is the subject of the petition, is within the authority and jurisdiction of the Department;

008.02B Whether the ruling, if issued, would terminate the uncertainty or controversy giving rise to the petition; and

008.02C Whether the petitioner seeks a declaratory ruling applicable to any class.

If the Director finds that the Department does have authority and jurisdiction, and that a ruling could terminate the controversy, and that the petitioner is not seeking a ruling applicable to a class, the Director shall, within ninety (90) days of the filing of the petition, set the matter for hearing. If the Director finds that any of the conditions aforementioned do not exist, the matter will not be set for hearing. The Director shall notify petitioner, within thirty (30) days of the filing of the petition, as to whether or not a hearing will be conducted on the requested ruling, giving reasons in support of his decision.

008.03 Hearing of Declaratory Rulings

008.03A Notice. All persons who have any interest in, or would be affected by the disposition of the petition shall be notified of the hearing. If the requested ruling relates to the constitutionality or validity of a rule or statute, the Attorney General shall also be notified. All notices shall be given at least twenty (20) days prior to the date of hearing.

008.03B Hearings. Hearings on declaratory rulings shall be conducted by a Hearing Officer. Witnesses may be summoned to testify under oath. An official record shall be prepared at all hearings.

008.03C Evidence and Procedure. The admission of testimony and evidence at hearings on declaratory rulings shall not be governed by the formal rules of evidence. The Hearing Officer shall admit and give probative effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. Testimony and evidence at the hearing may be given by the Director, Department Staff, any person having an interest in the ruling, witnesses, or the Attorney General. The Hearing Officer shall rule on any motions or objections presented at the hearing.

008.04 Ruling of Director. After the hearing on the declaratory ruling, the Director shall formulate a rule stating the applicability of the rule or statute under consideration to the person, property or state of facts alleged in the petition. Such ruling, when issued and stated by the Director to be binding, shall be binding upon the petitioner and the Department with respect to the person, property, or state of facts alleged.

008.05 Notice of Ruling of Director. The petitioner, persons having or claiming an interest in or are affected by the ruling, and the Attorney General shall be notified of the ruling of the Director within thirty (30) days of the hearing. Such notice shall state the Director's ruling and include reasons in support of the ruling.

(Sections 81-112, 81-1107 and 84-901 et seq. 1943.)