

IC 22-4-32

Chapter 32. Employer Liability, Rights, and Remedies

IC 22-4-32-1

Disputes; hearings

Sec. 1. A liability administrative law judge shall hear all matters pertaining to:

- (1) the assessment of contributions, penalties, and interest;
- (2) which accounts, if any, benefits paid, or finally ordered to be paid, should be charged;
- (3) successorships, and related matters arising therefrom, including but not limited to:
 - (A) the transfer of accounts;
 - (B) the determination of rates of contribution; and
 - (C) determinations under IC 22-4-11.5; and
- (4) claims for refunds of contributions or adjustments thereon in connection with subsequent contribution payments;

for which an employing unit has timely filed a protest under section 4 of this chapter.

(Formerly: Acts 1947, c.208, s.3301.) As amended by P.L.135-1990, SEC.23; P.L.290-2001, SEC.25; P.L.108-2006, SEC.54; P.L.42-2011, SEC.44.

IC 22-4-32-2

Disputes; subpoenas; interlocutory orders

Sec. 2. In addition to all other powers conferred upon the liability administrative law judge in accordance with this article and the rules issued pursuant to this article, the liability administrative law judge shall have the power to:

- (1) administer oaths and affirmations;
- (2) issue such subpoenas as are provided for by IC 22-4-17-7;
- (3) rule upon offers of proof and receive relevant oral or documentary evidence;
- (4) take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (5) regulate the course of a hearing and the conduct of the parties;
- (6) hold informal prehearing conferences for the settlement or simplification of the issues by consent of the parties;
- (7) examine or cause to have examined by order such parts of the books and records of the parties to a proceeding as relate to the questions in dispute;
- (8) dispose of procedural motions, requests for adjustment;
- (9) continue any hearing upon his own motion, or upon application of any interested party for good cause shown; and
- (10) make such interlocutory and final orders as are necessary for the resolving or determination of the issues arising in the cause.

(Formerly: Acts 1947, c.208, s.3302.) As amended by P.L.144-1986, SEC.138; P.L.135-1990, SEC.24.

IC 22-4-32-3

Disputes; rules of practice and procedure; qualifications of person representing employer

Sec. 3. The proceedings before a liability administrative law judge shall be conducted in accordance with such rules of practice and procedure as the department may adopt under its rulemaking authority under IC 22-4-18-1. Any person representing any interested party in the prosecution or defense of any proceedings before a liability administrative law judge must be admitted to practice law in the courts of the state of Indiana, except that persons admitted to practice before the courts of other states may on special order be permitted to appear in any proceeding before the liability administrative law judge. This section shall not be construed to prohibit an interested party from electing to be heard in his own cause without counsel.

(Formerly: Acts 1947, c.208, s.3303.) As amended by P.L.144-1986, SEC.139; P.L.135-1990, SEC.25; P.L.108-2006, SEC.55.

IC 22-4-32-4

Disputes; protest; time limit

Sec. 4. An employing unit shall have fifteen (15) calendar days, beginning on the date an initial determination is mailed to the employing unit, within which to protest in writing an initial determination of the department with respect to:

- (1) the assessments of contributions, penalties, and interest;
- (2) the transfer of charges from an employer's account;
- (3) merit rate calculations;
- (4) successorships;
- (5) the denial of claims for refunds and adjustments; and
- (6) a determination under IC 22-4-11.5.

(Formerly: Acts 1947, c.208, s.3304.) As amended by P.L.18-1987, SEC.86; P.L.21-1995, SEC.120; P.L.108-2006, SEC.56.

IC 22-4-32-5

Disputes; protest; hearing

Sec. 5. Upon receipt of such protest in writing, the commissioner promptly shall refer the written protest to the liability administrative law judge who shall set a date for a hearing before the liability administrative law judge and notify the interested parties thereof by registered mail. Unless such written protest is withdrawn, the liability administrative law judge, after affording the parties a reasonable opportunity for a fair hearing, shall make findings and conclusions, and, on the basis thereof, affirm, modify, or reverse the initial determination of the board.

(Formerly: Acts 1947, c.208, s.3305.) As amended by P.L.18-1987, SEC.87; P.L.135-1990, SEC.26; P.L.21-1995, SEC.121.

IC 22-4-32-6

Disputes; parties

Sec. 6. Any interested party to the dispute shall mean and include

the protesting employing unit, the commissioner, and any person appearing to the liability administrative law judge to be necessary or indispensable to the determination of the issues involved in the hearing.

(Formerly: Acts 1947, c.208, s.3306; Acts 1957, c.299, s.11.) As amended by P.L.18-1987, SEC.88; P.L.135-1990, SEC.27; P.L.21-1995, SEC.122.

IC 22-4-32-7

Disputes; finding and decision; notice of appeal

Sec. 7. After the hearing the liability administrative law judge shall as soon as practicable notify the interested parties in writing of the finding and decision of the liability administrative law judge, which shall become final thirty (30) days thereafter in the absence of the filing of a notice of appeal as provided in this chapter.

(Formerly: Acts 1947, c.208, s.3307.) As amended by P.L.18-1987, SEC.89; P.L.135-1990, SEC.28; P.L.108-2006, SEC.57.

IC 22-4-32-8

Disputes; appeals; notice

Sec. 8. A notice of appeal shall be served on the adverse party at any time before the decision of the liability administrative law judge becomes final, and shall stay the finality of the decision for thirty (30) days from the service of such notice. If such appeal is perfected, further proceedings shall be stayed pending the final determination of said appeal. If an appeal from the decision of the liability administrative law judge is not perfected within the time provided for by this article, no action or proceeding shall be further stayed.

(Formerly: Acts 1947, c.208, s.3308; Acts 1951, c.295, s.19.) As amended by P.L.144-1986, SEC.140; P.L.135-1990, SEC.29; P.L.108-2006, SEC.58.

IC 22-4-32-9

Disputes; appeals; use of evidence in separate or subsequent actions

Sec. 9. (a) Any decision of the liability administrative law judge shall be conclusive and binding as to all questions of fact. An interested party to the dispute may, within thirty (30) days after notice of intention to appeal as herein provided, appeal the decision to the supreme court or the court of appeals solely for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

(b) Any finding of fact, judgment, conclusion, or final order made by a person with the authority to make findings of fact or law in an action or proceeding under this article is not conclusive or binding and shall not be used as evidence in a separate or subsequent action or proceeding between an individual and the individual's present or prior employer in an action or proceeding brought before an arbitrator, a court, or a judge of this state or the United States regardless of whether the prior action was between the same or

related parties or involved the same facts.
(Formerly: Acts 1947, c.208, s.3309; Acts 1951, c.295, s.20.) As amended by P.L.3-1989, SEC.135; P.L.135-1990, SEC.30; P.L.21-1995, SEC.123.

IC 22-4-32-10

Disputes; hearings; transcript of record

Sec. 10. A full and complete record shall be kept of all proceedings had before the liability administrative law judge, and all testimony shall be retained in a suitable media such as an audio recording or a transcription by a court reporter. The liability administrative law judge shall, at the timely written request of the appellant, have a transcript prepared of all the proceedings had before the liability administrative law judge, which shall contain a transcript of all the testimony, together with all objections and rulings thereon, documents and papers introduced as evidence or offered as evidence, and all rulings as to their admission into evidence, which said transcript shall be certified by the liability administrative law judge and shall constitute the record on appeal.
(Formerly: Acts 1947, c.208, s.3310; Acts 1951, c.295, s.21.) As amended by P.L.135-1990, SEC.31; P.L.105-1994, SEC.4.

IC 22-4-32-11

Disputes; appeals; deposit

Sec. 11. The department, by rule, may require the appellant to deposit with the department an amount sufficient to pay the actual costs of preparing the transcript of the record of the proceedings before the liability administrative law judge before preparing the same.
(Formerly: Acts 1947, c.208, s.3311; Acts 1951, c.295, s.22.) As amended by P.L.18-1987, SEC.90; P.L.135-1990, SEC.32; P.L.108-2006, SEC.59.

IC 22-4-32-12

Disputes; assignment of errors

Sec. 12. The appellant shall attach to said transcript an assignment of errors. An assignment of errors that the decision of the liability administrative law judge is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the decision, and the sufficiency of the evidence to sustain the finding of facts.
(Formerly: Acts 1947, c.208, s.3312; Acts 1951, c.295, s.23.) As amended by P.L.135-1990, SEC.33.

IC 22-4-32-13

Disputes; appeals; priorities

Sec. 13. All appeals shall be submitted upon the date filed in the supreme court or the court of appeals, shall be advanced upon the docket of the court, and shall be determined without delay in the order of priority. The supreme court or the court of appeals may in any such appeal remand the proceedings to the liability

administrative law judge for the taking of additional evidence, setting time limits therefor, and ordering such additional evidence to be certified by the liability administrative law judge to the remanding court to be used in the determination of the cause.

(Formerly: Acts 1947, c.208, s.3313; Acts 1951, c.295, s.24.) As amended by P.L.3-1989, SEC.136; P.L.135-1990, SEC.34.

IC 22-4-32-14

Repealed

(Repealed by Acts 1972, P.L.8, SEC.9.)

IC 22-4-32-15

Assessment of contribution; appeal; security for cost

Sec. 15. No judicial review proceeding shall be entertained by the court with respect to the assessment of any contributions, interest or penalties, unless the court finds that the payment of such assessment is secured by bond, deposit or otherwise as the court may approve. The bond shall be in such an amount necessary to insure the payment of the assessment stayed, and court costs, if any, which may be incurred in this action.

(Formerly: Acts 1947, c.208, s.3315; Acts 1955, c.317, s.13.)

IC 22-4-32-16

Insolvency proceedings; delinquent contributions; priorities

Sec. 16. In the event of any distribution of any employer's assets pursuant to an order of any court under the laws of this state including but not necessarily limited to any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except claims for remuneration.

(Formerly: Acts 1947, c.208, s.3318.) As amended by P.L.290-2001, SEC.26; P.L.175-2009, SEC.39.

IC 22-4-32-17

Fiduciaries; final report; notice of payment of contribution

Sec. 17. No final report or act of any executor, administrator, receiver, other fiduciary, or other officer engaged in administering the assets of any employer subject to the payment of contributions under this article and acting under the authority and supervision of any court shall be allowed or approved by the court unless such report or account shows and the court finds that all contributions, interest, and penalties imposed by this article have been paid pursuant to this section, and that all contributions which may become due under this article are secured by bond or deposit.

(Formerly: Acts 1947, c.208, s.3319.) As amended by P.L.144-1986, SEC.141; P.L.290-2001, SEC.27; P.L.175-2009, SEC.40.

IC 22-4-32-18

Dissolution of companies; payment of contributions; certificate

Sec. 18. To the end that the purposes of this article may be

effectively enforced and administered, it is the declared intention of the general assembly that in all cases of legal distributions and dissolutions the commissioner shall have actual notice before any fiduciary administering the affairs of an employer subject to the payment of contributions under this article may file the fiduciary's final report with the court under whose authority and supervision such fiduciary acts. From and after April 1, 1947, no such final report shall be filed unless a copy thereof has been served upon the commissioner by mailing a copy thereof by registered mail to the commissioner at the commissioner's office in Indianapolis at least ten (10) days prior to the filing of the same with the court. Such final report shall contain a statement that a copy thereof was served in the manner provided in this section upon the commissioner, and before such final report may be approved by the court there shall be filed in said cause a certificate from the commissioner that this section has been fully complied with in the administration of the affairs of said employer. In the event that the commissioner shall not have been served with a copy of the final report as provided in this section and the fiduciary or other officer of the court administering the affairs of any such employer shall have been discharged and the fiduciary's or other officer's final report approved, the commissioner may at any time within one (1) year from the date upon which such final report was approved file a petition with the court alleging that there was not full compliance with this section and the court, upon being satisfied that the commissioner was not fully advised of the proceedings relative to the filing and approval of the final report as provided in this section, shall set aside its approval of said final report with the result that the proceedings shall be reinstated as though no final report had been filed in the first instance and shall proceed from that point in the manner provided by law and not inconsistent with the provisions of this section.

(Formerly: Acts 1947, c.208, s.3320.) As amended by P.L.144-1986, SEC.142; P.L.18-1987, SEC.91; P.L.21-1995, SEC.124; P.L.290-2001, SEC.28; P.L.42-2011, SEC.45.

IC 22-4-32-19

Adjustments or refunds; application; time limit

Sec. 19. (a) The department may grant an application for adjustment or refund, make an adjustment or refund, or set off a refund as follows:

- (1) Not later than four (4) years after the date upon which any contributions or interest thereon were paid, an employing unit which has paid such contributions or interest thereon may make application for an adjustment or a refund of such contributions or an adjustment thereon in connection with subsequent contribution payments. The department shall thereupon determine whether or not such contribution or interest or any portion thereof, was erroneously paid or wrongfully assessed.
- (2) The department may grant such application in whole or in part and may make an adjustment, without interest, in

connection with subsequent contribution payments or refund such amounts, without interest, from the fund. Adjustments or refund may be made on the commissioner's own initiative.

(3) Any adjustments or refunds of interest or penalties collected for contributions due under IC 22-4-10-1 shall be charged to and paid from the special employment and training services fund created by IC 22-4-25.

(4) The department may set off any refund available to an employer under this section against any delinquent contributions, payments in lieu of contributions, and the interest and penalties, if any, related to the delinquent payments and assessments.

(b) Any decision by the department to:

- (1) grant an application for adjustment or refund;
- (2) make an adjustment or refund on its own initiative; or
- (3) set off a refund;

constitutes the initial determination referred to in section 4 of this chapter and is subject to hearing and review as provided in sections 1 through 15 of this chapter.

(c) If any assessment has become final by virtue of a decision of a liability administrative law judge with the result that no proceeding for judicial review as provided in this article was instituted, no refund or adjustment with respect to such assessment shall be made. *(Formerly: Acts 1947, c.208, s.3321; Acts 1967, c.310, s.23.) As amended by P.L.144-1986, SEC.143; P.L.18-1987, SEC.92; P.L.135-1990, SEC.35; P.L.21-1995, SEC.125; P.L.290-2001, SEC.29; P.L.202-2005, SEC.6; P.L.108-2006, SEC.60; P.L.175-2009, SEC.41.*

IC 22-4-32-20

Contributions; penalties; personal liability of employer

Sec. 20. The contributions, penalties, and interest due from any employer under the provisions of this article from the time they shall be due shall be a personal liability of the employer to and for the benefit of the fund and the employment and training services administration fund.

(Formerly: Acts 1947, c.208, s.3322.) As amended by P.L.144-1986, SEC.144; P.L.18-1987, SEC.93; P.L.290-2001, SEC.30; P.L.175-2009, SEC.42.

IC 22-4-32-21

Successor employer; notice of purchase; account clearance statements; liability for contributions; liens

Sec. 21. (a) Any individual, group of individuals, or other legal entity, whether or not an employing unit which acquires all or part of the organization, trade, or business within this state of an employer or which acquires all or part of the assets of such organization, trade or business, shall notify the commissioner in writing by registered mail not later than five (5) days prior to the acquisition.

(b) Unless such notice is given, the commissioner shall have the

right to proceed against either the predecessor or successor, in personam or in rem, for the collection of contributions and interest due or accrued and unpaid by the predecessor, as of the date of such acquisition, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens. However, the lien shall not be valid as against one who acquires from the successor any interest in the property or assets in good faith, for value and without notice of the lien.

(c) On written request after the acquisition is completed, the commissioner shall furnish the successor with a written statement of the amount of contributions and interest due or accrued and unpaid by the predecessor as of the date of such acquisition, and the liability of the successor and the amount of the lien shall in no event exceed the reasonable value of the property or assets acquired by the successor from the predecessor or the amount disclosed by such statement, whichever is the lesser.

(d) An acquirer described in subsection (a) or a professional employer organization under IC 22-4-6.5 may file a request for clearance in the manner prescribed by the department at least five (5) business days before an acquisition or transfer. After filing a request, the acquirer or professional employer organization is entitled to receive a statement indicating whether an account being acquired or transferred is in good standing with the department as of the date of the transfer. If the statement shows that the account that is being acquired or transferred is in good standing with the department at the time of the transfer, and the department later discovers an outstanding liability associated with the acquired or transferred account, the department:

(1) may not assess a delinquent employer rate modification under IC 22-4-11-2 based on the account for which a statement was made under this subsection; and

(2) in the case of a PEO, shall administratively separate the acquired or transferred client account from the PEO until the liability is recovered.

(e) The remedies prescribed by this section are in addition to all other existing remedies against the predecessor or successor.

(Formerly: Acts 1947, c.208, s.3323; Acts 1951, c.295, s.24 1/2.) As amended by P.L.18-1987, SEC.94; P.L.5-1988, SEC.114; P.L.21-1995, SEC.126; P.L.33-2013, SEC.5.

IC 22-4-32-22

Repealed

(Repealed by P.L.107-1987, SEC.50.)

IC 22-4-32-23

Dissolution, liquidation, or withdrawal of corporation; notification; clearance

Sec. 23. (a) As used in this section:

(1) "Dissolution" refers to dissolution of a corporation under IC 23-1-45 through IC 23-1-48 or dissolution under Indiana law

of an association, a joint venture, an estate, a partnership, a limited liability partnership, a limited liability company, a joint stock company, or an insurance company (referred to as a "noncorporate entity" in this section).

(2) "Liquidation" means the operation or act of winding up a corporation's or entity's affairs, when normal business activities have ceased, by settling its debts and realizing upon and distributing its assets.

(3) "Withdrawal" refers to the withdrawal of a foreign corporation from Indiana under IC 23-1-50.

(b) The officers and directors of a corporation effecting dissolution, liquidation, or withdrawal or the appropriate individuals of a noncorporate entity shall do the following:

(1) File all necessary documents with the department in a timely manner as required by this article.

(2) Make all payments of contributions to the department in a timely manner as required by this article.

(3) File with the department a form of notification within thirty (30) days of the adoption of a resolution or plan. The form of notification shall be prescribed by the department and may require information concerning:

(A) the corporation's or noncorporate entity's assets;

(B) the corporation's or noncorporate entity's liabilities;

(C) details of the plan or resolution;

(D) the names and addresses of corporate officers, directors, and shareholders or the noncorporate entity's owners, members, or trustees;

(E) a copy of the minutes of the shareholders' meeting or the noncorporate entity's meeting at which the plan or resolution was formally adopted; and

(F) such other information as the board may require.

The commissioner may accept, in lieu of the department's form of notification, a copy of Form 966 that the corporation filed with the Internal Revenue Service.

(c) Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, the corporate officers and directors of a corporation and the chief executive of a noncorporate entity remain personally liable, subject to IC 23-1-35-1(e), for any acts or omissions that result in the distribution of corporate or noncorporate entity assets in violation of the interests of the state. An officer or director of a corporation or a chief executive of a noncorporate entity held liable for an unlawful distribution under this subsection is entitled to contribution:

(1) from every other director who voted for or assented to the distribution, subject to IC 23-1-35-1(e); and

(2) from each shareholder, owner, member, or trustee for the amount the shareholder, owner, member, or trustee accepted.

(d) The corporation's officers' and directors' and the noncorporate entity's chief executive's personal liability includes all contributions,

penalties, interest, and fees associated with the collection of the liability due the department. In addition to the penalties provided elsewhere in this article, a penalty of up to thirty percent (30%) of the unpaid contributions may be imposed on the corporate officers and directors and the noncorporate entity's chief executive for failure to take reasonable steps to set aside corporate assets to meet the liability due the department.

(e) If the department fails to begin a collection action against a corporate officer or director or a noncorporate entity's chief executive within one (1) year after the filing of a completed form of notification with the department, the personal liability of the corporate officer or director or noncorporate entity's chief executive expires. The filing of a substantially blank form of notification or a form containing misrepresentation of material facts does not constitute filing a form of notification for the purpose of determining the period of personal liability of the officers and directors of the corporation or the chief executive of the noncorporate entity.

(f) In addition to the remedies contained in this section, the department is entitled to pursue corporate assets that have been distributed to shareholders or noncorporate entity assets that have been distributed to owners, members, or beneficiaries, in violation of the interests of the state. The election to pursue one (1) remedy does not foreclose the state's option to pursue other legal remedies.

(g) The department may issue a clearance to a corporation or noncorporate entity effecting dissolution, liquidation, or withdrawal if:

(1) the:

(A) officers and directors of the corporation have; or

(B) chief executive of the noncorporate entity has;

met the requirements of subsection (b); and

(2) request for the clearance is made in writing by the officers and directors of the corporation or chief executive of the noncorporate entity within thirty (30) days after the filing of the form of notification with the department.

(h) The issuance of a clearance by the department under subsection (g) releases the officers and directors of a corporation and the chief executive of a noncorporate entity from personal liability under this section.

As added by P.L.107-1987, SEC.2. Amended by P.L.21-1995, SEC.127; P.L.290-2001, SEC.31; P.L.1-2002, SEC.93; P.L.175-2009, SEC.43; P.L.42-2011, SEC.46.

IC 22-4-32-24

Notices

Sec. 24. (a) This section applies to notices given under sections 4, 7, 8, and 9 of this chapter.

(b) As used in this section, "notices" includes mailings pertaining to:

(1) the assessment of contributions, penalties, and interest;

(2) the transfer of charges from an employer's account;

- (3) successorships and related matters arising from successorships;
- (4) claims for refunds and adjustments;
- (5) violations under IC 22-4-11.5;
- (6) decisions; and
- (7) notices of intention to appeal or seek judicial review.

(c) If a notice under this chapter is served through the United States Postal Service, three (3) days must be added to a period that commences upon service of that notice.

(d) The filing of a document with the unemployment insurance appeals division or review board is complete on the earliest of the following dates that apply to the filing:

- (1) The date on which the document is delivered to the unemployment insurance appeals division or review board.
- (2) The date of the postmark on the envelope containing the document if the document is mailed to the unemployment insurance appeals division or review board by the United States Postal Service.
- (3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the unemployment insurance appeals division or review board by a private carrier.

As added by P.L.135-1990, SEC.36. Amended by P.L.290-2001, SEC.32; P.L.108-2006, SEC.61; P.L.175-2009, SEC.44.