

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency: Department of Labor
Rule No. 480-4-2-.23
Rule Title: Application For Protest And Review And Rendering
Decisions On Protest Of Liability, Assessment And Reimbursement
Determinations

_____ New X Amend _____ Repeal _____ Adopt by Reference _____

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? NO

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Stephen McCall

Date 8-21-13

APA-2
07/04

**Department of
Labor**

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF LABOR

RULE NO. & TITLE: 480-4-2-.23 Application For Protest And Review And Rendering Decisions On Protest Of Liability, Assessment And Reimbursement Determinations

INTENDED ACTION: Amendment

SUBSTANCE OF PROPOSED ACTION: The amendment gives proper procedures for filing a protest to determinations regarding misclassified workers.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments in writing to Stephen McCormick, Department of Labor, 649 Monroe Street, Montgomery, Alabama 36131 by mail or in person between the hours of 8:00 am and 4:30 pm, Monday through Friday until and including October 07, 2013. Persons wishing to submit data, views or arguments orally should contact Stephen McCormick by telephone at (334) 242-8274 during this period to arrange an appointment.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: October 07, 2013

CONTACT PERSON AT AGENCY:

Stephen McCormick
Department of Labor
649 Monroe Street
Montgomery, AL 36131
Telephone: (334) 242-8274



Stephen McCormick
Director, Governmental Affairs

**ALABAMA DEPARTMENT OF LABOR
UNEMPLOYMENT COMPENSATION
ADMINISTRATIVE CODE**

**CHAPTER 480-4-2
TAX**

480-4-2-.23 Application For Protest And Review And Rendering Decisions On Protest Of Liability, Assessment And Reimbursement Determinations.

(1) Applications for Review and Protest. All applications for review of determinations regarding the taxing provisions and all protests as provided for herein must be in writing, signed by the protesting party, authorized representative or his attorney, and contain a short and concise statement of the facts and grounds upon which it is believed that the action to which review is sought or protested is erroneous. Application for review and protest should be filed with the Director, Department of Industrial Relations, ATTN: Tax Operations, Industrial Relations Building, Montgomery, Alabama 36130. Such application must be received from the employer within the time period prescribed by statute or rules. Upon receipt of a protest timely filed pursuant to statute and rules, an administrative review shall be conducted and the protesting party notified of the results.

(2) Burden of Proof. The original determination of the Agency shall be considered prima facie correct. The burden of proof shall be on the protesting party to establish by evidence that the determination of the Agency was in error.

(3) Determination of Status of Employer. Employing units will have their liability under the Alabama Unemployment Compensation law determined promptly upon receipt of all the required information prescribed by statute or these rules. The employing unit will be notified of the determination by regular mail and, if appropriate, the notice shall contain the assigned account number and contribution rate. If the employer disagrees with the final determination, an administrative review of the facts involved in the liability decision will be conducted at the written request of the employer. The request shall be made within 15 days of the date the notice of determination is mailed and shall be directed to the attention of "Tax Operations."

Should the employer disagree with the results of the review and upon notice fails to submit the required reports and/or pay the contributions that become due under these rules or statute, the employer may be given the opportunity for a hearing. Such hearing will be provided during the assessment proceedings as prescribed by statute and rules.

(4) Application for Review of Benefit Wage Charges or Reimbursable Costs.

(a) An employer may request a review of the quarterly benefit wage charges or benefit costs within a 90 day period following the mailing of such notice by regular mail to the employer's last known address. Otherwise the statement will be conclusive and final upon the employer for all purposes and for all proceedings whatsoever.

(b) Application for review must be filed in accordance with provisions in rule 480-4-2-.23(2).

(c) The review process of the benefit wage charge statement shall be conducted pursuant to Code of Ala. 1975, §25-4-54(c)(4) of the Alabama Unemployment Compensation Law.

(5) Application for Review of a Tax Rate.

(a) An employer may apply for a review of the determination of his benefit wage percentage and his contribution rate as fixed by his benefit wage percentage provided such application is filed in accordance with rule 480-4-2-.23(2) and received within 30 days of the date of notice fixing his tax rate.

(b) The Director, after review, will issue his ruling promptly. Any employer may appeal such ruling within 30 days from the date of the Director's ruling to the Circuit Court of any county as provided in Code of Ala. 1975, §25-4-54(h) of the Alabama Unemployment Compensation Law.

(6) Review and protests of assessment levied pursuant to Code of Ala. 1975, §25-4-134 of the Alabama Unemployment Compensation Law.

(a) In cases where an employer fails to comply with the taxing and reporting provisions of the Law and rules, the Director may initiate assessment proceedings against such employer pursuant to Code of Ala. 1975, §25-4-134.

(b) Whenever the Director shall make an assessment against an employer, proper notice shall be given to the employer by registered or certified mail setting forth the amount of the assessment, purpose of the assessment, and time and place for hearing.

(c) The assessment process shall be conducted in accordance with Code of Ala. 1975, §25-4-134 of the Alabama Unemployment Compensation Law and shall afford the employer a reasonable opportunity for a fair and impartial hearing before a hearing officer as provided in the rules governing such hearings. The right of appeal from the hearing officer's decision is as provided by Code of Ala. 1975, §25-4-134.

(7) An employer may request a review of the Determination of Employee/Employer or master/servant relationship pursuant to Code of Ala. 1975, §25-4-7 and/or §2-4-10. The employing unit will be notified of the determination that the previously unreported workers misclassified as contract labor are in fact determined to be covered employees. The determination will be sent by first class mail or electronic mail.

(a) If the employer disagrees with the final determination, an administrative review of the facts involved in the decision will be conducted at the written request of the employer. The request shall be made within 30 days of the date the notice of determination is mailed and shall be directed to the attention of "Tax Operations."

(b) In accordance with provisions in rule 480-4-2-.23(2).

Author: Charlotte H. Lackey

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-2-8 and 25-4-111.

History: September 30, 1982. Filed August 21, 2013.