

EMPLOYMENT APPEAL BOARD[486]

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CHAPTER 1
ORGANIZATION

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

486—1.1(10A) Organization.

1.1(1) The employment appeal board is comprised of three members appointed by the governor, subject to confirmation of the senate. The members are appointed pursuant to Iowa Code section 10A.601(2) to represent the interests of employers, employees, and the general public.

1.1(2) The employment appeal board's offices are located at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The office hours are 8 a.m. to 4:30 p.m. Monday through Friday. The office is closed on all state holidays.

1.1(3) The board shall meet the first Monday in May of even-numbered years to select a chairperson and vice-chairperson.

1.1(4) The board shall meet not less than once per month to vote and decide cases which are eligible for review or decision. The meetings are open to the public pursuant to the open meetings law. The board shall also meet at the call of the chairperson or vice-chairperson.

[Editorial change: IAC Supplement 2/21/24]

486—1.2(10A) Jurisdiction and filing of appeals.

1.2(1) The employment appeal board has authority to hear appeals or to review records on appeal in the following areas:

1. Department of personnel actions under Iowa Code chapter 19A.
2. Peace officer and capitol security discharges under Iowa Code chapter 80.
3. Occupational Safety and Health Act citations under Iowa Code chapter 88.
4. Elevator code citations under Iowa Code chapter 89A.
5. Contractor registration citations under Iowa Code chapter 91C.
6. Unemployment insurance appeals under Iowa Code chapter 96.
7. IPERS appeals under Iowa Code chapter 97B.

1.2(2) The procedures for filing appeals in the above areas and the time for filing such appeals are specified in each of the following chapters pertaining to a specific area.

1.2(3) In all instances, appeals may be filed by mailing the appeal, filing the appeal in person, or faxing the appeal to the employment appeal board at 515.281.7191. The address for the employment appeal board is Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

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These rules are intended to implement Iowa Code section 10A.601.

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CHAPTER 2
GENERAL RULES OF PROCEDURE

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486—2.1(10A) General procedures. The following rules of general procedure will apply to all appeals and hearings conducted by the employment appeal board. Unless otherwise specified by rules within the chapters on particular areas, these rules apply. If no rule covers a specific provision, the rules of civil procedure shall be used to provide guidance.

486—2.2(10A) Definitions. Definitions as used herein by the employment appeal board are as follows:

“Address of record” means address listed in the Iowa workforce development department’s unemployment decisions records.

“Aggrieved person” means an individual or company who has received an adverse ruling from an administrative law judge in a proceeding subject to appeal board review. It also means a company who has received a citation or citations from an OSHA inspector and wishes to contest that citation or citations. It also means a contractor who has been cited for failing to comply with the contractor registration laws and wishes to contest the citation.

“Appeal” means any instrument, including an online appeal submitted through the online appeal form available on the Iowa workforce development Web site, used to notify the employment appeal board that an aggrieved individual wishes to appeal a decision of an administrative law judge. The instrument must be in writing.

“Appeal board” means the employment appeal board.

“Claimant” is an individual who has filed a request for determination of insured status or a new claim for unemployment insurance benefits.

“Employer” is an individual, partnership or corporation who employed the claimant in the claimant’s base period, or was the last employer of the claimant or offered comparable suitable employment to a claimant, which the claimant refused.

“Filing date” means the date prescribed by statute or rule for an action required to be taken. The filing date will be the date the document is postmarked, if filed by U.S. Postal Service; the date of the faxed document, if filed by facsimile transmission; the date of the document, if the postmark is illegible; the earliest date the transmission indicates that it was submitted if filed via the online appeal form; or the date received, if filed by any other means. If filed by fax, the original copy of the document shall be mailed to the employment appeal board. If the document is filed by U.S. Postal Service and the document contains both a postal meter mark and a U.S. Postal Service postmark, the U.S. Postal Service postmark shall be used to determine the filing date.

“Good cause” cannot be defined in precise language because what is good cause in one circumstance may not be good cause in a different circumstance. It may be generally defined as that reasonable excuse given, under the circumstances of the case, to excuse an action which was not taken when it should have been taken. As an example, good cause for not appearing at a scheduled hearing would be if the individual had not received the notice of hearing in time to participate. The individual alleging good cause has the burden to establish that good cause did exist to excuse the failure to take the needed action.

“New or additional evidence” means any evidence, testimonial or documentary, which is filed after the date of the decision of the administrative law judge and which, if due diligence had been used, could have been presented to that administrative law judge. A request to file new or additional evidence, or both, must be made within ten days after the mailing of the notice to the parties that an appeal has been filed. Such request shall set forth the nature of the evidence, the materiality of such evidence, and the reasons why it was not introduced at the hearing before the administrative law judge.

“Remand request,” as interpreted by the employment appeal board, means a document indicating that the individual filing the document wishes the matter to be returned to the administrative law judge for a new hearing.

“*Work product*” means those documents produced by the agency which describe or portray the “mental impressions,” conclusions, opinions, or legal theories concerning the determination made by the agency as a result of agency investigation or inquiry.

[ARC 1358C, IAB 3/5/14, effective 4/9/14]

486—2.3(10A) Ex parte communications.

2.3(1) An ex parte communication is an oral or written communication relating directly to the facts or legal questions at issue in a contested case proceeding which is made by a party in interest to the employment appeal board without the knowledge of or outside the presence of the other parties and with the object of affecting the outcome of the case.

2.3(2) Ex parte communication does not include:

- a. Statements given by the parties to claims representatives for use in making the initial determination;
- b. Statements contained in any party’s appeal from an initial determination;
- c. Statements relating only to procedural or scheduling matters, such as requests for discovery, subpoenas, postponements or withdrawals of appeals; or
- d. Requests for clarification of a legal issue involved in a contested case, but only to the extent of requesting information on the applicable law and not as to matters of fact.

2.3(3) Unless required for the disposition of ex parte matters specifically authorized by statute or rule, no party or its representative shall communicate directly or indirectly with the employment appeal board concerning a contested case before the board, nor shall any member of the employment appeal board communicate directly or indirectly with a party or its representative concerning any such issue of fact or law in a contested case unless:

- a. Each party or its representative is given written notification of the communication. Such notification shall contain a summary of the communication, if oral, or a copy of the communication, if written, as well as the time, place and means of communication.
- b. After notification, all parties have the right, upon written demand, to respond to the ex parte communication, including the right to be present and heard if an oral communication has not been completed. If the communication is written, or oral and completed, all other parties have the right, upon written demand, to a special hearing to respond to the ex parte communication.
- c. Whether or not any party requests the opportunity to respond to an ex parte communication made in violation of Iowa Code section 17A.17(2), the employment appeal board shall include such communication in the official record of the contested case.

These rules are intended to implement Iowa Code section 10A.601.

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CHAPTER 3
UNEMPLOYMENT INSURANCE APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

486—3.1(10A) Appeals.

3.1(1) *Lower authority's decisions to employment appeal board.* A copy of each administrative law judge's decision, pertinent to unemployment insurance matters, shall be submitted to the employment appeal board on the date the decision is issued.

3.1(2) *Form and time of appeal.* A party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of the decision. The appeal shall state the grounds for the appeal. If sent by mail or courier, the appeal shall be addressed to Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The appeal may also be filed in any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board at the above address. The date of the appeal is the date of the fax transmission. Appeals may also be filed online by completing and submitting an online appeal form available on the Iowa workforce development website.

3.1(3) *Procedure when an appeal is filed.* Upon receipt of notice of appeal, the entire record before the administrative law judge shall be forwarded to the employment appeal board. One copy of the testimony and evidence received by the administrative law judge shall be mailed to the parties or their designated representative. That mailing shall be identified by a transmittal of testimony and shall provide instructions for the filing of written briefs.

3.1(4) *Additional parties.* Whenever it appears that other parties should be joined in order to dispose of all issues, the employment appeal board shall so order and notify the parties of further procedures to be followed.

3.1(5) *Consolidation of proceedings.* Any number of cases before the employment appeal board may be consolidated for hearing, argument, consideration and decision when the facts and circumstances are the same or similar and no substantial right of any party will be prejudiced.

3.1(6) *Issues on appeal.* The employment appeal board may consider any issue raised by the action pertaining to the eligibility of an individual for unemployment insurance benefits. If new issues appear, different from those which are noticed in the appeal, the board may remand such issues to an administrative law judge for appropriate action, or in the interest of prompt administration of justice and without prejudicing the substantive rights of any party, may hear and decide any issue material to the appeal, even if not specifically indicated as a ground for appeal or not noticed for the administrative hearing.

3.1(7) *New or additional evidence.*

a. An application to present new or additional evidence shall be in writing and shall be filed within ten days after the date of mailing notice to the parties that an appeal has been filed.

b. The application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. No such evidence shall be considered by the board unless the board has ordered it admitted.

c. Whenever the board, on its own motion, or upon the application of a party, orders the taking of new or additional evidence, the board may schedule a hearing or remand the matter to an administrative law judge. The issues at such hearing shall be limited to those issues designated by the appeal board. The parties shall be notified ten days before the date of the hearing, specifying the place and time of the hearing.

d. Whenever the board holds the hearing, the parties may introduce such evidence as may be pertinent to the issues on which the board has directed the taking of evidence. All parties shall have the right to examine and cross-examine other parties and witnesses.

e. If only documentary evidence is to be admitted, a copy of the evidence shall be mailed by the board to each of the parties, and the parties shall be granted ten days to submit written arguments on that

evidence. The party which has not submitted the new evidence may submit rebuttal evidence to the new evidence.

3.1(8) *Postponement of hearing of appeals.* Applications for postponement of hearing of appeals, scheduled before the appeal board, shall be submitted in writing at least three days before the date of the scheduled hearing, and shall be granted at the discretion of the appeal board. Each party shall be granted only one postponement, except as determined by the chairperson of the appeal board.

3.1(9) *Adjournment and continuance.* Adjournment and continuance may be granted for good cause by the appeal board. Notice of the adjournment or continuance shall be given to all parties, at their last-known address according to the division's record.

3.1(10) *Hearing of appeals.* An appeal to the board may be considered and decided based upon the evidence in the record made before the administrative law judge or the appeal board. The board may schedule a hearing to permit the parties to offer oral or written argument, or both. The parties shall be notified by the appeal board of such hearing by notice at least ten days before the date of the hearing.

3.1(11) *Remand of appeals.* The appeal board may remand any claim or claims for any issue involved in the claim or pertaining to the claim to an administrative law judge for the taking of additional evidence as the appeal board may deem necessary.

3.1(12) *Taking of evidence.* If the appeal board decides that evidence shall be taken, such evidence may be taken before the appeal board. The hearing may be conducted by the appeal board, or the board may designate an attorney employed by the appeal board to conduct such hearing. The parties shall be notified of the time and date of the hearing and shall be provided with instructions about how to participate in the hearing. The proceedings shall be recorded and made a part of the record.

3.1(13) *Written briefs and oral arguments.* The parties shall be granted the opportunity to submit written briefs on all issues to be decided. The briefs and arguments shall be submitted within seven days from the date of mailing of the transcript of testimony, in cases where an evidentiary hearing was held. In those cases where no hearing was held, the parties shall have ten days to submit written briefs and the opportunity to show good cause for not appearing. A request for extension of time to submit briefs must be made within the time set for submission of the briefs. Each party shall be granted one seven-day extension without justification. Requests for second extensions must be for good cause and will be granted at the discretion of the chairperson of the appeal board.

The appeal board may afford the parties an opportunity to present oral arguments and may limit the time of oral arguments. Requests to present oral arguments shall be submitted within ten days from the date of mailing of the acknowledgment of appeal and shall state the reasons for the oral argument.

3.1(14) *Nonappearance at appeal hearing.* If the appellant fails to appear at a scheduled hearing and does not submit good cause for failing to appear within ten days from the date of the hearing, the appeal board shall issue a decision based upon the evidence contained in the record.

3.1(15) *Withdrawal of appeal.* Any appeal may be withdrawn by the appellant, by written request, anytime before a decision is issued by the appeal board. If a request is made, the appeal shall be dismissed. An appeal so dismissed may be reinstated by the appeal board if the appellant files a written request to reinstate and shows that the request for withdrawal resulted from misinformation given by the workforce development department, unemployment insurance division, or for other good cause shown, as determined by the appeal board. A request for reinstatement shall be made within 60 days after the mailing of the decision dismissing the appeal or, in the event of fraud, within 60 days after discovery of the fraud.

3.1(16) *Late appeals.* The appeal board shall dismiss appeals which are not filed within 15 days from the date of the administrative law judge's decision, unless good cause for the delay has been shown.

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486—3.2(10A) Removals.

3.2(1) Within ten days following the decision of an administrative law judge, and in the absence of a filing of a notice of appeal to the appeal board by any of the parties from a decision of the administrative law judge, the appeal board on its own motion may order the parties to appear before the board for a hearing on the claim or any issue involved therein.

3.2(2) Such hearings shall be held only after notice, mailed to the parties ten days from the date of the removal of the case to the appeal board.

3.2(3) The proceedings on any claim before an administrative law judge ordered by the appeal board to be removed to itself shall be presented, heard, and decided by the appeal board in the manner prescribed for the hearing of appeals before an administrative law judge. The appeal board may review the evidence already contained in the record, giving the parties time to file written briefs and arguments, and issue a decision based upon that evidence.

486—3.3(10A) Appeal board decisions.

3.3(1) An appeal shall be decided based upon the evidence contained in the entire record before the administrative law judge, including the testimony of the hearing before the administrative law judge, together with any oral or written arguments presented to the board. Should the appeal board order additional evidence be admitted to the record, that evidence and briefs pertaining to that evidence shall be considered.

3.3(2) Following the review of an appeal or the conclusion of a hearing on appeal, the appeal board shall, within a reasonable time, render a written decision. The decision shall be signed by the members of the appeal board who reviewed the appeal, and a copy of said decision shall be filed in the offices of the employment appeal board. All decisions of the appeal board shall be filed in the offices of the unemployment insurance division of the workforce development department.

3.3(3) A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

3.3(4) If a decision of the appeal board is not unanimous, the decision of the majority shall control. A majority shall be two members. The minority member may file a dissent from such decision setting forth the reasons why that member fails to agree with the majority. The appeal board, in its discretion, may omit the giving of any reasons for its decision on cases in which the decision of an administrative law judge is affirmed without any alteration or modification.

3.3(5) Copies of the decision shall be mailed to all parties to the appeal. The decision shall specify the parties' appeal rights.

3.3(6) The appeal board's decision shall become the final decision of the unemployment insurance division of the workforce development department 30 days after the decision is mailed to all interested parties of record. The date of mailing shall be affixed to the decision immediately below the signatures of the board members reviewing the decision. Any party may file an application for rehearing within 20 days of the date of the board's decision.

3.3(7) The appeal board's decision on an application for rehearing shall be final and without further review 30 days after the date the decision is mailed to the parties of record, unless within that 30 days a petition for judicial review is filed in the appropriate district court.

3.3(8) An application for rehearing shall be deemed denied unless the appeal board acts upon that application within 20 days of its filing date with the appeal board. A petition for judicial review may be filed within 30 days of the date of the appeal board's decision without the necessity of filing an application for rehearing.

3.3(9) After a decision of the appeal board has become final, the matter shall not be reopened, reconsidered, or reheard. The decision shall not be changed except to correct obvious clerical errors in the decision.

486—3.4(10A) Rehearing of the appeal board decision.

3.4(1) Solely on showing of good cause, the appeal board may, upon application by a party, reopen and review any prior decision, provided the application for rehearing is filed within 20 days from the date of the issuance of the prior decision.

3.4(2) The application shall be in writing, stating specific grounds therefor and the specific relief sought. Copies of such application shall be mailed, by the appeal board, to all parties of record not joining in the application.

3.4(3) In determining whether good cause exists for the appeal board to rehear a prior decision, the following factors shall be considered:

a. Whether the application presents newly discovered evidence or facts which are not cumulative, corroborative, or material to the issue decided and are not of sufficient weight to cause a reversal or change in the appeal board's decision.

b. Prior to and at the time of the appeal board's decision, such new information must not have been available through reasonable search by the applicant and must not have been previously considered in any prior appeals decision.

c. When the application presents evidence that benefits were allowed or denied, or the amount of benefits was fixed on the basis of nondisclosure or a misrepresentation of material fact.

3.4(4) If the application for rehearing is granted, the record shall be reopened and the matter may be remanded to an administrative law judge to allow the taking of further testimony and the establishment of further or new findings of fact. The matter then may be transferred to the appeal board for final action. The appeal board may admit documentary evidence or take additional testimony and then reissue a decision based upon the entire record.

3.4(5) The application for rehearing shall be deemed denied unless the appeal board takes action to grant or deny the application within 20 days from the date of the filing of the application.

3.4(6) If the application for rehearing is denied, all administrative remedies shall have been exhausted and the applicant may petition the appropriate district court for review pursuant to Iowa Code section 17A.19.

486—3.5(10A) Disqualification of appeal board members.

3.5(1) No appeal board member shall participate in any hearing in which the member has an interest which might affect the ultimate decision.

3.5(2) A challenge to the interest of an appeal board member may be made in writing at any time prior to the date the appeal board's decision becomes final.

3.5(3) Such challenge shall be filed with the chairperson of the appeal board and will be heard by the unchallenged members of the appeal board. A tie vote shall result in dismissing the challenge.

3.5(4) In the event one or more members of the appeal board are absent or otherwise disqualified, the case will be reviewed by the remaining members. A tie vote will result in affirming the administrative law judge's decision by operation of law.

486—3.6(10A) Public hearing. All hearings and meetings of the employment appeal board shall be open to the public except where the provisions of Iowa Code section 20.5 apply.

486—3.7(10A) Specific rules applicable to unemployment insurance claims.

3.7(1) Investigations.

a. Whenever, in the course of an appeal, an investigation, inquiry, payroll audit or other examination appears necessary for a proper determination of a case, the appeal board may request such investigation, inquiry, payroll audit, or other examination through the appropriate department.

b. Hearings on the appeal shall be continued or adjourned pending the completion of such investigation, inquiry, or examination.

c. The right to be informed of, to cross-examine, to inspect, and to rebut the results of the investigation, inquiry, or examination shall be preserved to all parties to the appeal.

3.7(2) Information to be furnished.

a. Information from the records of the workforce development department, unemployment insurance division, shall be furnished to a party or the party's representative to the extent necessary for the proper presentation of an appeal upon application.

b. Applications for information from records of the division shall state the nature of the information desired.

3.7(3) Payment of benefits. If the appeal board's decision allows benefits by reversing or modifying an administrative law judge's decision, benefits shall be promptly paid. The filing of an application for a rehearing or for judicial review shall not stay the effect of the appeal board's decision.

3.7(4) Redeterminations.

a. If a claim has been decided under the gross misconduct section of the Iowa Code, a redetermination may be made anytime within five years of the effective date of the claim, even though a final decision has been made by the appeal board.

b. The redetermination may be appealed to the appeal board.

c. If the redetermination results in a reversal of an allowance of benefits and holds that the claimant was discharged for an act of gross misconduct, all benefits paid to the claimant prior to the redetermination shall be assessed as an overpayment and shall be collectible in the manner provided in Iowa Code section 96.14(3) for the collection of past due contributions.

d. If the redetermination results in an allowance of benefits by reversing a previously imposed disqualification for gross misconduct, the claimant shall be paid benefits for all weeks for which the claimant has submitted a continued claim report form.

e. A request for a redetermination may be made only by an interested party to the original case which resulted in the determination, decision, or final decision of the appeal board under the gross misconduct section.

3.7(5) *Workforce development department employees as witnesses.*

a. Those employees of the workforce development department directly involved in handling the claim which resulted in the appeal may be called to testify by the appeal board.

b. The employee having direct knowledge of the local job market may be called as a witness by the appeal board to testify concerning the wages, hours and other conditions of employment relating to the particular job and job market involved in the appeal.

c. The employer to whom an applicant is referred for work or who offers work or recall to work of an individual claiming unemployment insurance benefits shall be named in the appeal and shall receive all applicable notices and decisions.

486—3.8(10A) Retention of records. Records of proceedings in contested cases, appealed to the employment appeal board, shall be retained:

1. Sixty days following the final date for an appeal to the district court.
2. Sixty days following the entry of a final order by the district court.
3. Sixty days following the filing of the decision of the court of appeals.
4. Sixty days following the filing of an opinion by the supreme court.

Other records of the employment appeal board may be retained as determined by the board.

Records of cases involving federal appeals or those cases which are governed by federal law or rules shall be retained as determined by federal regulation pertaining to the case.

These rules are intended to implement Iowa Code section 10A.601.

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[Editorial change: IAC Supplement 2/21/24]

CHAPTER 4
RULES OF PROCEDURE FOR OSHA APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

DIVISION I
GENERAL PROVISIONS

[Prior to 9/7/88 Occupational Safety and Health Review Commission[610] Ch 1]

486—4.1(10A,88) Definitions as used herein.

“*Act*” means the Iowa Occupational Safety and Health Act, Iowa Code chapter 88.

“*Administrative law judge*” means an administrative hearing officer with the appeals and fair hearings division, department of inspections and appeals.

“*Affected employee*” means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of assigned duties.

“*Authorized employee representative*” means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

“*Citation*” means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.7.

“*Commissioner of labor*” means the commissioner of labor or duly authorized representative.

“*Day*” means a calendar day.

“*Employment appeal board*” means the three-member employment appeal board.

“*Notification of proposed penalty*” means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.8.

“*Proceeding*” means any proceeding before the administrative law judge or the employment appeal board.

“*Representative*” means any person, including an authorized employee representative, authorized by a party or intervenor to represent that party or intervenor in a proceeding.

“*Working day*” means all days except Saturdays, Sundays, state and federal holidays.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.2(10A,88) Scope of rules—applicability of Iowa rules of civil procedure.

4.2(1) These rules shall govern all proceedings before the employment appeal board.

4.2(2) In the absence of a specific provision, procedures shall be in accordance with the Iowa rules of civil procedure.

486—4.3(10A,88) Use of number. Words importing the singular number may extend and be applied to the plural and vice versa.

486—4.4(10A,88) Computation of time.

4.4(1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, state or federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, state or federal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, state and federal holidays shall be excluded in the computation.

4.4(2) Where service of a pleading or document is by mail pursuant to 4.7(10A,88), three days shall be added to the time allowed by these rules for the filing of a responsive pleading.

486—4.5(10A,88) Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

486—4.6(10A,88) Record address. The name, address, and telephone number shall be included in the initial pleading filed by any party or intervenor. Any change in such information must be communicated promptly in writing to the employment appeal board and to all other parties and intervenors. Parties or intervenors who fail to furnish such information shall be deemed to have waived their rights to notice and service under these rules.

486—4.7(10A,88) Service and notice.

4.7(1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

4.7(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

4.7(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

4.7(4) Proof of service on other parties and intervenors shall be accomplished by a written statement which sets forth the date and manner of service. Such statements shall be filed with the pleading or document.

4.7(5) Where service is accomplished by posting, proof of posting shall be filed not later than the first working day following the posting.

4.7(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in 4.7(3).

4.7(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of docketing of the notice of contest, post, where the citation is required to be posted by the labor services division rules, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subrule:

(Name of Employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before an administrative law judge designated by the employment appeal board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the employment appeal board in its rules of procedure. Notice of intent to participate should be sent at the earliest opportunity to: Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near the workplace).

4.7(8) The authorized employee representative, if any, shall be served with the notice set forth in 4.7(7) and with a copy of the notice of contest.

4.7(9) A copy of the notice of the hearing to be held before the administrative law judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

4.7(10) A copy of the notice of the hearing to be held before the administrative law judge or the employment appeal board shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in 4.7(3), if the employer has not been informed that the authorized employee representative has entered an appearance as of the date notice is received by the employer.

4.7(11) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with 4.35(10A,88) of this division, serve a copy thereof on such authorized employee representative in the manner prescribed in 4.7(3) and shall file proof of such service.

4.7(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in 4.7(7).

4.7(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

4.7(14) Where posting is required by this rule, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

4.7(15) When settlement agreements are filed with the employment appeal board they shall be posted for ten days at or near the place where the citation is required to be posted.

4.7(16) If any party or intervenor fails to comply with the notice requirements of these rules, the employment appeal board may issue appropriate orders.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

[Editorial change: IAC Supplement 2/21/24]

486—4.8(10A,88) Filing.

4.8(1) All papers shall be filed with the Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

4.8(2) Unless otherwise ordered, all filing may be accomplished by first-class mail.

4.8(3) Filing is deemed effected at the time of mailing.

[Editorial change: IAC Supplement 2/21/24]

486—4.9(10A,88) Consolidation. Cases may be consolidated on the motion of any party or intervenor or on the employment appeal board's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.10(10A,88) Severance. Upon its own motion, or upon motion of any party or intervenor, the employment appeal board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

486—4.11(10A,88) Protection of trade secrets and other confidential information.

4.11(1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by Iowa Code section 88.12, the employment appeal board or the administrative law judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

4.11(2) Interlocutory appeal to the employment appeal board from an adverse ruling by the administrative law judge under this rule shall be granted as of right.

486—4.12 to 4.19 Reserved.

DIVISION II
PARTIES AND REPRESENTATIVES

486—4.20(10A,88) Party status.

4.20(1) Affected employees or authorized employee representatives may elect to participate as parties at any time before the commencement of the hearing, unless, for good cause shown, the employment appeal board allows such election at a later time. See also 4.21(10A,88).

4.20(2) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing. See also 4.21(10A,88).

This rule is intended to implement Iowa Code sections 88.8(3) and 10A.601.

486—4.21(10A,88) Intervention—appearance by nonparties.

4.21(1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing.

4.21(2) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

4.21(3) The employment appeal board or the administrative law judge may grant a petition for intervention to such an extent and upon such terms as the employment appeal board or the administrative law judge shall determine.

486—4.22(10A,88) Representatives of parties and intervenors.

4.22(1) Any party or intervenor may appear in person or through a representative.

4.22(2) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

4.22(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

4.22(4) Nothing contained herein shall be construed to require any representative to be an attorney at law.

4.22(5) Withdrawal of appearance of any representatives may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

486—4.23 to 4.29 Reserved.

DIVISION III
PLEADINGS AND MOTIONS

486—4.30(10A,88) Form.

4.30(1) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with 4.31(10A,88), which shall include the employment appeal board's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

4.30(2) It is recommended that pleadings and other documents (other than exhibits) be typewritten, double spaced, on standard size paper (approximately 8½ inches by 11 inches), have adequate margins and be securely fastened.

4.30(3) Pleadings shall be signed by the person filing or by the person's representative. Such signing constitutes a representation that the signer has read the document or pleading, that to the best of the signer's knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

4.30(4) The employment appeal board may refuse for filing any pleading or document which does not comply with the requirements of 4.30(1), 4.30(2) and 4.30(3).

4.30(5) After an appeal or the notice of contest has been filed, additional filings or documents may be sent by facsimile transmission (fax). A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the EAB. The EAB will not provide a mailed, file-stamped copy of documents filed by fax.

486—4.31(10A,88) Caption—titles of cases.

4.31(1) Cases initiated by a notice of contest shall be titled: Commissioner of Labor, Complainant v. (Name of Contestant), Respondent.

4.31(2) Cases initiated by a petition for modification of the abatement period shall be titled: (Name of Employer), Petitioner v. Commissioner of Labor, Respondent.

4.31(3) The titles listed in 4.30(1) and 4.30(2) shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

4.31(4) The first page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the caption, the docket number, if known, assigned to the case.

486—4.32(10A,88) Notices of contest. The commissioner of labor shall, within seven days of receipt of a notice of contest, transmit the original to the employment appeal board, together with copies of all relevant documents.

486—4.33(10A,88) Employer contests.

4.33(1) Complaint.

a. The commissioner of labor shall file a complaint with the employment appeal board no later than 20 days after receipt of notice of contest.

b. The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

(1) The basis for jurisdiction;

(2) The time, location, place, and circumstances of each alleged violation; and

(3) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation are based.

c. Where the commissioner of labor seeks in the complaint to amend the citation or proposed penalty, the commissioner of labor shall set forth the reasons for amendment and shall state with particularity the change sought.

4.33(2) Answer.

a. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the employment appeal board.

b. The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest.

486—4.34(10A,88) Response to motions. Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response.

486—4.35(10A,88) Failure to file. Failure to file any pleading pursuant to these rules when due may, in the discretion of the employment appeal board, constitute a withdrawal of the citation or the notice of contest. The employment appeal board may, after opportunity for hearing of excuses for failure to file, enter a final or proposed final order defaulting the party and disposing of the case without regard to the merits of the alleged violation.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.36(10A,88) Petitions for modification of abatement period.

4.36(1) An employer may file a petition for modification of abatement period with the commissioner of labor when such employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed because of factors beyond the employer's reasonable control.

4.36(2) A petition for modification of abatement period shall be filed with the commissioner of labor no later than the close of the next working day following the date on which abatement was originally required. A letter-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

4.36(3) A petition for modification of abatement period shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement period necessary in order to achieve compliance.

c. The reason such additional time is necessary in order to achieve compliance.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. Certification by the employer that it has posted a copy of the petition for modification of abatement period, and a notice informing affected employees of their right to intervene and of the availability of all pleadings for inspection and copying at reasonable times. Service of the above documents upon any authorized employee representative shall also be certified by the employer. A notice in the following form shall be deemed to comply with this subrule:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested more time to correct one or more violations. Affected employees are entitled to participate as parties under terms and conditions established by the employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file such objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceeding relating thereto. Objections shall be sent to: Commissioner of Labor, Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace).

4.36(4) The commissioner of labor shall have the authority to approve a petition for modification of abatement period filed in accordance with subrules 4.34(2) and 4.36(3), but the commissioner of labor shall not exercise approval power until the expiration of 15 working days from the date the petition and notice were first posted pursuant to 4.36(3) "e" and 4.36(5). Uncontested approved petitions shall be deemed final orders of the employment appeal board.

4.36(5) The employer shall post a copy of the petition and a notice of employee rights complying with 4.36(3) "e" before filing a petition with the commissioner of labor. Such posting shall be in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition.

4.36(6) Affected employees or their representatives may file an objection in writing to the petition with the commissioner of labor. Failure to file an objection within ten working days of the date of posting of the petition or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

4.36(7) Where an objection is filed by an affected employee or authorized employee representative, a copy of that objection shall be provided to the employer for posting along with the documents specified in 4.36(5). An authorized employee representative who files an objection shall serve any other authorized employee representative whose members are affected employees.

4.36(8) Where any petition is objected to by affected employees or by the commissioner of labor, such petition shall be processed as follows:

a. The petition, citation, and objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-working-day period set out in 4.36(4).

b. The employment appeal board shall docket and process such petition as an emergency proceeding under 4.101(3).

c. An employer petitioning for modification of an abatement period shall have the burden of proving that it has made a good faith effort to comply with the abatement requirements of the citation and abatement has not been completed because of factors beyond its reasonable control.

d. Within ten days after receipt of the notice of docketing by the employment appeal board, each objecting party or intervenor may file a response to the petition or a statement of position regarding the petition with the employment appeal board.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.37(10A,88) Employee contests.

4.37(1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner of labor shall, within ten days from receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed is not unreasonable.

4.37(2) Not later than ten days after receipt of the commissioner of labor's statement, the contestant shall file a response.

4.37(3) Pursuant to Iowa Code section 88.8(3), the employee's notice of contest must be filed within 15 days of the issuance of the citation.

4.37(4) All contests under this rule shall be handled as an expedited proceeding under 4.101(3).

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.38 to 4.49 Reserved.

DIVISION IV
PREHEARING PROCEDURES AND DISCOVERY

486—4.50(10A,88) Withdrawal of notice of contest, citation or complaint. At any stage of the proceedings, for good cause shown, a party may withdraw the notice of contest, the citation, or complaint, subject to the approval of the employment appeal board.

486—4.51(10A,88) Prehearing conference.

4.51(1) At any time before a hearing, the employment appeal board, on its own motion or on motion of a party, may direct the parties and intervenors or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues to expedite the proceedings.

4.51(2) The employment appeal board may issue a prehearing order which includes the agreements reached by the parties and intervenors. Such order shall be served on all parties and intervenors and shall be a part of the record.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.52(10A,88) Requests for admissions.

4.52(1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 30 days after service of the request, or within such shorter or longer time as the employment appeal board may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

4.52(2) Copies of all requests and responses shall be served on all parties and intervenors in accordance with the provisions of 4.7(1) and filed with the employment appeal board within the time allotted and shall be a part of the record.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.53(10A,88) Discovery.

4.53(1) Pursuant to Iowa Code subsection 17A.13(1), discovery procedures applicable to civil actions shall be available to all parties in contested cases before the employment appeal board.

4.53(2) Where there is a failure to comply with any proper method of discovery permitted under these rules, the party seeking discovery may apply to the employment appeal board for an order compelling discovery.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.54(10A,88) Failure to comply with orders for discovery. If any person fails to comply with an order of the employment appeal board to permit discovery in accordance with the provisions of these rules, the employment appeal board may issue appropriate orders.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.55(10A,88) Issuance of subpoenas—petitions to revoke or modify subpoenas—right to inspect or copy data.

4.55(1) The employment appeal board shall, on the application of any party directed to the employment appeal board, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in their possession or under their control. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. The requesting party shall be responsible for service of the subpoenas.

4.55(2) Any person served with a subpoena shall, at any time prior to the hearing, move in writing to revoke or modify the subpoena if that person does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The employment appeal board shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law, the subpoena is otherwise invalid. The employment appeal board shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

4.55(3) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of, transcripts of the data or evidence submitted by them.

4.55(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the employment appeal board shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. The employment appeal board shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

486—4.56 to 4.59 Reserved.

DIVISION V
HEARINGS

486—4.60(10A,88) Notice of hearing. Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten days in advance of such hearing, except as otherwise provided in 4.101(10A,88).

486—4.61(10A,88) Postponement of hearing.

4.61(1) Postponement of a hearing ordinarily will not be allowed, unless a case of extreme emergency exists or a request is made in writing at least three days in advance of the date set for the hearing.

4.61(2) No postponement in excess of 30 days shall be allowed without employment appeal board approval.

486—4.62(10A,88) Failure to appear.

4.62(1) Subject to the provisions of 4.62(2), the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the employment appeal board or to appeal the decision.

4.62(2) The employment appeal board, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.63(10A,88) Payment of witness fees and mileage—fees of persons taking depositions.

Witnesses summoned before the employment appeal board shall be paid the same fees and mileage that are paid witnesses in the district courts of the state of Iowa, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the district courts of the state of Iowa. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

486—4.64(10A,88) Reporter's fees. Reporter's fees shall be borne by the party or intervenor requesting a court reporter, unless the employment appeal board provides for a court reporter. Transcript costs shall be borne by the person requesting a transcript.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.65(10A,88) Transcript of testimony.

4.65(1) Hearings shall be electronically recorded. A record of testimony taken at the hearing shall be filed in the employment appeal board office.

4.65(2) The employment appeal board's recording or transcript of the hearing shall be available to any interested person for examination at reasonable times without cost. Upon receipt of a copy of a petition filed in a district court of Iowa praying that an order of the employment appeal board be modified or set aside pursuant to Iowa Code section 88.9, the employment appeal board shall either:

- a. Have the electronic recording transcribed, certify the transcript, and file it with the court, if no court reporter recorded the hearing, or
- b. Contract with the court reporter to transcribe the reporter's notes; in which case the reporter shall certify the transcript and deliver the transcript to the employment appeal board for filing with the court.

486—4.66(10A,88) Duties and powers of the employment appeal board or administrative law judge.

It shall be the duty of the employment appeal board or the administrative law judge to conduct a fair and impartial hearing, to ensure that the facts are fully elicited, to adjudicate all issues and avoid delay. The employment appeal board or the administrative law judge shall have authority to:

1. Administer oaths and affirmations;
2. Issue authorized subpoenas;
3. Rule upon petitions to revoke subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the needs of justice would be served;
6. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
7. Hold conferences for the settlement or simplification of the issues;
8. Dispose of procedural requests or similar matters, including motions and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of its decisions;
9. Reserved.
10. Call and examine witnesses and to introduce into the record documentary or other evidence;
11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
12. Adjourn the hearing as the needs of justice and good administration require;
13. Take any other action necessary under the foregoing and authorized by the Act and published rules of the employment appeal board.

486—4.67(10A,88) Disqualification of member of employment appeal board or administrative law judge.

4.67(1) Members of employment appeal board or the administrative law judge may withdraw from a proceeding whenever they deem themselves disqualified.

4.67(2) Any party may request any member of the employment appeal board or the administrative law judge before the filing of the decision to withdraw on grounds of personal bias or disqualification, by filing with the employment appeal board or the administrative law judge promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

4.67(3) If, in the opinion of the employment appeal board or the administrative law judge, the affidavit referred to in 4.67(2) is filed with due diligence and is sufficient on its face, the employment appeal board member or the administrative law judge shall forthwith withdraw from the proceeding.

4.67(4) If the employment appeal board member or the administrative law judge does not withdraw from the proceeding, the employment appeal board or the administrative law judge shall so rule upon the record, stating the grounds for so ruling and shall proceed with the hearing, or if the hearing is closed, shall proceed with the issuance of a decision, and the provisions of 4.90(10A,88) shall thereupon apply.

486—4.68(10A,88) Examination of witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

486—4.69(10A,88) Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

486—4.70(10A,88) Deposition in lieu of oral testimony—application—procedures—forms—rulings.

4.70(1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as “the officer”). Such application shall be filed with the employment appeal board and shall be served on all other parties and intervenors. Where good cause has been shown, the employment appeal board shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

4.70(2) Such deposition shall be taken pursuant to the Iowa rules of civil procedure.

4.70(3) The officer shall immediately deliver the transcript, together with a certificate in person, or by registered mail to the Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

4.70(4) The employment appeal board or administrative law judge shall rule upon the admissibility of the deposition or any part thereof.

4.70(5) All errors or irregularities in compliance with the provision of this rule shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

4.70(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

[Editorial change: IAC Supplement 2/21/24]

486—4.71(10A,88) Exhibits.

4.71(1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

4.71(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the employment appeal board or administrative law judge pursuant to 4.72(10A,88).

4.71(3) Unless the employment appeal board or administrative law judge finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

4.71(4) All exhibits offered but denied admission into evidence shall be identified as in 4.71(1) and shall be placed in a separate file designated for rejected exhibits.

486—4.72(10A,88) Rules of evidence. Hearings before the employment appeal board or administrative law judge shall be in accordance with these rules and insofar as practicable shall be governed by the rules of evidence applicable in the Iowa district courts. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for their serious affairs, and it may be based upon such evidence even if it would not be admissible in a jury trial.

486—4.73(10A,88) Burden of proof.

4.73(1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner of labor.

4.73(2) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

486—4.74(10A,88) Objections.

4.74(1) Any objections with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the administrative law judge may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

4.74(2) Whenever evidence is excluded from the record, the person offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

486—4.75 Reserved.

486—4.76(10A,88) Filing of briefs and proposed findings with the employment appeal board or the administrative law judge—oral argument at the hearing. Any party or intervenor shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the electronically or stenographically recorded report of the hearing. Any party or intervenor shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the employment appeal board or administrative law judge. The employment appeal board or administrative law judge may fix a reasonable period of time for such filing.

486—4.77(10A,88) Conduct of persons attending meetings or hearing.

4.77(1) The employment appeal board or the administrative law judge may exclude a person from an open meeting or hearing for behavior that obstructs an orderly meeting or hearing.

4.77(2) Cameras and recording devices shall be placed and used within the hearing room in a manner that will not obstruct the meeting or hearing. Use of artificial lighting for filming for photographic purposes shall not be allowed during the course of the hearing. If the user of the camera or recording device violates this rule, the employment appeal board or administrative law judge may order the person excluded from the meeting or hearing.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.78 to 4.89 Reserved.

DIVISION VI
POSTHEARING PROCEDURES

486—4.90(10A,88) Decisions of employment appeal board or administrative law judge.

4.90(1) When the employment appeal board presides at the reception of the evidence in a contested case, the decision of the employment appeal board is a final decision.

4.90(2) When the employment appeal board did not preside at the reception of the evidence in a contested case, the administrative law judge shall make a proposed decision. When the administrative law judge makes a proposed decision, that decision then becomes the final decision of the employment appeal board without further proceedings unless there is an appeal to, or review on motion of, the employment appeal board within 20 days. Findings of fact shall be prepared by the administrative law judge after the reception of the evidence in a contested case unless the administrative law judge becomes unavailable to the employment appeal board. If the administrative law judge is unavailable, the findings of fact may be prepared by another person qualified to be an administrative law judge who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the administrative law judge is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

4.90(3) On appeal from or review of the proposed decision or declaratory ruling, the employment appeal board has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the employment appeal board, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the employment appeal board, present oral arguments to the employment appeal board members who are to render the final decision.

4.90(4) A proposed or final order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact, conclusions of law, and an order, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If, in accordance with these rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

4.90(5) Parties and intervenors shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order.

4.90(6) Employers shall post a copy of the decision and proposed or final order for a period of 30 days for the information of affected employees.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.91 Reserved.

486—4.92(10A,88) Stay or rehearing of final order.

4.92(1) Any party or intervenor aggrieved by a final order of the employment appeal board may, while the matter is within the jurisdiction of the employment appeal board, file a motion for a stay or a rehearing.

4.92(2) Such motion shall set forth the reasons a stay or rehearing is sought and the specific relief requested.

4.92(3) The employment appeal board may order such relief or may vary the relief as it deems appropriate.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.93 to 4.99 Reserved.

DIVISION VII
MISCELLANEOUS PROVISIONS

486—4.100(10A,88) Settlement.

4.100(1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

4.100(2) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in 4.7(10A,88). Proof of such service shall accompany the proposed settlement agreement when submitted to the employment appeal board.

4.100(3) Parties and intervenors shall have ten days from the date of service to object to a settlement agreement.

4.100(4) Settlement agreements shall be filed with the employment appeal board to permit final disposition of the contested case.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.101(10A,88) Emergency proceeding.

4.101(1) Upon the application of any party or intervenor, or upon its own motion, and for good cause shown, the employment appeal board may order an emergency proceeding. The party or intervenor shall include in its motion the hazards to which the employees are exposed, the probable injuries which could occur from such exposure, and the number of employees exposed to each hazard.

4.101(2) When such proceeding is ordered, the employment appeal board shall notify all parties and intervenors.

4.101(3) The employment appeal board in an emergency proceeding shall make necessary orders with respect to time for filing of pleadings and other documents and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.102(10A,88) Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Iowa. The employment appeal board or administrative law judge may take appropriate action to enforce the standards of conduct including, but not limited to, excluding persons from the hearing.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.103(10A,88) Ex parte communication.

4.103(1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the employment appeal board, including any members, officer, employee, or agent of the employment appeal board who is employed in the decisional process, and any of the parties or intervenors.

4.103(2) In the event such ex parte communication occurs, the employment appeal board may make such orders or take such action as fairness requires. Upon notice and hearing, the employment appeal board may take disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

486—4.104(10A,88) Restrictions as to participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in Chapter 4, the commissioner of labor shall not participate or advise with respect to the employment appeal board's decision except as permitted by these rules.

486—4.105(10A,88) Inspection and reproduction of documents.

4.105(1) Subject to the provisions of law restricting public disclosure of information, any person may, at the office of the employment appeal board, inspect and copy any document filed in any proceeding.

4.105(2) Costs shall be borne by such person.

486—4.106(10A,88) Restrictions with respect to former employees.

4.106(1) No former employee of the employment appeal board or the commissioner of labor (including a member of the employment appeal board or the commissioner of labor) shall appear before the employment appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which that former employee participated personally and substantially during the period of employment.

4.106(2) No former employee of the employment appeal board or the commissioner of labor (including a member of the employment appeal board or the commissioner of labor) shall appear before the employment appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which that former employee was personally responsible during the period of employment, unless one year has elapsed since the termination of such employment.

486—4.107(17A) Petition for rule making.

4.107(1) Any interested person may petition the employment appeal board for the adoption, amendment, or repeal of a rule.

4.107(2) A petition for rule making shall comply with the form prescribed in 4.30(10A,88) and shall set forth in separately numbered paragraphs:

a. The text of any proposed rule or amendment, identifying the section or sections of the law or rule involved, or the rule sought to be repealed.

b. The reasons for requesting the action, including any relevant facts, opinions, or arguments.

c. A concise statement of the petitioner's interest in the subject matter.

4.107(3) Upon the filing of the petition the executive secretary shall inspect the petition to ensure substantial compliance with this rule. Petitions which fail to substantially comply with this rule shall be rejected and returned to the petitioner along with the reasons for the rejection. Petitioner may then correct the petition and refile it.

4.107(4) Within 60 days of the filing of a petition the employment appeal board shall meet to consider the petition. The employment appeal board shall either grant the petition and commence rule making, or deny the petition and notify the petitioner in writing of the grounds for the denial.

This rule is intended to implement Iowa Code sections 17A.7 and 10A.601 and chapter 88.

486—4.108(10A,88) Special circumstances—waiver of rules. In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the employment appeal board may, upon application by any party or intervenor, or on its own motion, after three days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

486—4.109(10A,88) Penalties.

4.109(1) All penalties assessed by the employment appeal board are civil.

4.109(2) The employment appeal board has no jurisdiction under Iowa Code sections 88.14(5), 88.14(6), 88.14(7) and 88.14(8) and will conduct no proceeding thereunder.

486—4.110(10A,88) Telephone hearing.

4.110(1) The employment appeal board or administrative law judge, on its own motion, or on the motion of any party or intervenor, and in the absence of an objection from any party or intervenor, may conduct a hearing by means of a telephone conference call. Hearings shall be recorded as provided in 4.65(1).

4.110(2) Any party or intervenor upon whom a motion for a telephone hearing is served shall have five days from service of the motion to file an objection.

4.110(3) Evidence and exhibits to be introduced during the course of a telephone hearing must be submitted to the employment appeal board with copies to all parties and intervenors before the date of the telephone hearing.

4.110(4) Persons who wish to be present at the telephone hearing but who do not wish to participate may attend and listen to the telephone hearing at the office of the administrative law judge or at the office of any consenting party or intervenor.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

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CHAPTER 5
PERSONNEL APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

486—5.1(10A) Appeals.

5.1(1) *Form and time of appeal.* A person aggrieved by a personnel action pertaining to an application rejection; examination rating; removal from an eligible list or disqualification; or veteran's points rejection may appeal to the employment appeal board within 30 days from the date of the notification of the action. The appeal must be in writing, signed by the appellant or authorized agent. If an appeal is signed by the authorized agent, the name of the appellant shall be shown in the appeal.

The appeal shall be addressed to Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

5.1(2) *Taking the appeal.* An appeal may be filed by mail, by facsimile transmission, by other transmission, or in person. If filed by U.S. Postal Service, the date of filing shall be the date of the postmark, if legible. If by fax, the date of filing shall be the date of the fax transmission. If by other transmission, or in person, the date of filing shall be the date received by the employment appeal board.

The employment appeal board shall provide the respondent agency a copy of the appeal.

5.1(3) *Hearing date and notice.* Upon receipt of the appeal, the appeal board shall determine if the board will conduct the hearing or if it will assign the appeal to an administrative law judge of the appeals section of the department of inspections and appeals. If the board conducts the hearing, a hearing date shall be established and notice of the hearing shall be sent to the parties by ordinary mail not less than ten days prior to the hearing.

If the matter is assigned to an administrative law judge, the matter shall be assigned for hearing by the administrative law judge utilizing procedures established by the appeals section of the department of inspections and appeals.

5.1(4) *Continuances.* Requests for continuance of a hearing must be made not less than three days before the scheduled hearing date. The request must be in writing and signed by the requesting party or an authorized representative. Each party shall be granted only one continuance, unless good cause is established as determined by the chairperson of the appeal board or assigned administrative law judge.

5.1(5) *Hearings.* The hearing may be conducted by a quorum of the employment appeal board. A quorum of the appeal board shall be two members. If the matter is assigned to an administrative law judge, that person shall conduct the hearing.

5.1(6) *Procedure during hearings.* If the appeal is heard by the employment appeal board, the hearing shall be conducted in an informal manner utilizing the procedures provided in Iowa Code section 17A.12.

5.1(7) *Decision.* If the hearing is conducted by the employment appeal board, the decision of the board shall be the final decision. If the hearing is conducted by an administrative law judge, the decision shall be a proposed decision, which shall become the final decision 20 days after the issue date of that decision, unless a further appeal is taken to the employment appeal board. The appeal board on further review may reverse, modify or remand the proposed decision. The decision of the employment appeal board becomes the final decision on further review.

5.1(8) *Rehearings and further appeals.* The decision of the appeal board shall be the final decision of the agency. A request for rehearing must be filed within 20 days of the date of the board's decision. The board has 20 days from the date of filing to act on the request for rehearing or it is deemed denied by law. Any appeal to district court must be made within 30 days from the date of the decision of the employment appeal board or to the denial, or deemed denial, of the request for rehearing.

This rule is intended to implement Iowa Code section 10A.601.

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CHAPTER 6
PEACE OFFICER AND CAPITOL SECURITY APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

486—6.1(10A) Appeals.

6.1(1) *Form and time of appeal.* The department of public safety shall file with the employment appeal board notice of intent to dismiss or of intent to take other action, under the purview of Iowa Code section 80.15, regarding a member of the department, including capitol security officers covered under Iowa Code section 80.15. The notice of intent shall become final unless within 30 days a request (hereafter called an appeal) to appear and defend the charges is filed by the person named. No notice of intent to take action need be filed for action not under the purview of Iowa Code section 80.15. Such personnel actions are effective without following the process of Iowa Code section 80.15.

6.1(2) *Filing of appeal.* An appeal shall be deemed filed on the date it is delivered to the employment appeal board. If mailed, the postmark date, appearing on the envelope, if postage was prepaid and properly addressed, shall constitute the filing date.

The appeal board shall provide the respondent agency a copy of the appeal.

6.1(3) *Hearing date and notice.* Upon receipt of the appeal, a hearing date shall be scheduled and notice of the hearing shall be mailed, by ordinary mail, to the parties not less than ten days prior to the hearing date.

6.1(4) *Continuances.* A request for continuance shall be granted only upon showing of good cause by the requesting party. The request must be in writing, stating the grounds therefor, and signed by the requesting party or an authorized agent.

6.1(5) *Hearings.* The hearing shall be conducted by a quorum of the appeal board or an administrative law judge designated by the appeal board. A quorum of the appeal board shall consist of two members of the board.

6.1(6) *Decisions.* If the hearing is conducted by the employment appeal board, the decision of the board shall be the final decision. If the hearing is conducted by an administrative law judge, the decision shall be a proposed decision, which shall become the final decision 30 days after the issue date of that decision, unless a further appeal is taken to the employment appeal board. The employment appeal board on further review may reverse, modify, or remand the proposed decision. The decision of the employment appeal board shall be by majority vote. The decision of the employment appeal board shall be a final agency decision subject to review through a petition for judicial review filed within 30 days of the date of the employment appeal board decision in the appropriate district court.

This rule is intended to implement Iowa Code section 10A.601.

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CHAPTER 7
CONSTRUCTION CONTRACTOR REGISTRATION
APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

486—7.1(91C) Appeals.

7.1(1) *Form and time of appeal.* Any contractor aggrieved by a citation of notice of proposed administrative penalty shall notify the commissioner of labor, within 15 working days from the date of receipt of the notice, that the contractor intends to contest the citation or proposed penalty. The commissioner shall, within 10 working days of the receipt of the notice of contest, transmit the original notice of contest to the employment appeal board, together with all records and documents contained in the administrative file, except the agency work product. The contest (hereinafter called appeal) must be in writing, signed by the respondent or authorized agent. If an appeal is signed by an authorized agent, the name of the respondent shall be shown at the end of the appeal, followed by the signature of the authorized agent.

7.1(2) *Taking the appeal.* An appeal shall be deemed filed on the date the notice of contest is filed with the commissioner of labor. The date shall be the date of the postmark, if filed by using the U.S. Postal Service with a properly addressed envelope with sufficient postage paid by the respondent. If the appeal is metered, with no postmark on the envelope, the date of the meter mark shall be the filing date. If neither a postmark nor meter mark is available, the date of the notice of contest shall be the filing date. If the notice of contest is filed by facsimile document, the date of the fax shall be the filing date.

7.1(3) *Hearing date and notice.* Upon receipt of the appeal, a determination shall be made by the appeal board whether the board shall hear the appeal or whether the appeal shall be assigned to an administrative law judge in the appeals section of the department of inspections and appeals. If the board determines it will hear the appeal, notice shall be provided to the parties, by ordinary mail, of the date and time of the hearing. This notice shall be provided not less than ten days prior to the hearing date. If the hearing is to be conducted by an administrative law judge, that judge shall provide notice of the hearing as provided by the rules of the appeals section.

7.1(4) *Continuances.* Requests for continuance of a hearing must be made not less than three days prior to the scheduled hearing date. The request must be in writing and signed by the requesting party or authorized representative. Each party shall be granted only one continuance, unless good cause is established for additional continuances. The chairperson of the appeal board shall determine whether good cause has been established for additional continuances.

7.1(5) *Hearing.* The hearing may be conducted by a quorum of the employment appeal board. A quorum shall consist of two members of the employment appeal board.

7.1(6) *Procedures during hearings.* The hearing shall be conducted in an informal manner as provided for by Iowa Code section 17A.12.

7.1(7) *Decisions.* When the employment appeal board presides at the reception of the evidence, the decision of the employment appeal board is the final decision. If the hearing is conducted by an administrative law judge, the decision of the judge shall be a proposed decision which shall become final unless an application for further review is filed with the employment appeal board within 20 days of the date of the administrative law judge's decision.

7.1(8) *Hearings and further appeals.* The decision of the employment appeal board is the final decision of the agency. An application for rehearing, as provided for by Iowa Code section 17A.16(2), must be filed within 20 days of the date of the employment appeal board's decision. The application shall be in writing, stating specific grounds for the rehearing, and be signed by the aggrieved party or representative.

An application for rehearing shall be deemed denied unless acted upon by the employment appeal board within 20 days of its filing by the party.

The decision of the appeal board shall become final, without further review, unless within 60 days from the date of the board's decision, a petition for judicial review is filed in the appropriate district court. A

petition for judicial review may be filed within 60 days from the date the application for rehearing has been denied or deemed denied.

This rule is intended to implement Iowa Code section 10A.601 and Iowa Code chapter 91C.

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CHAPTER 8
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

The employment appeal board adopts, with the following amendments and exceptions, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

486—8.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "employment appeal board".

"Custodian." Delete "the agency" and insert "an agency". Insert "The originating agency, if any, is the custodian of records which are used to carry out functions of the originating agency."

"Originating agency" means the government agency which has authority over and custody of records and for whom the board is performing a service.

486—8.3(17A,22) Requests for access to records.

8.3(1) Location of record. In lieu of the words "(insert agency head)" insert "board". In lieu of the words "(insert agency name and address)" insert "Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321".

8.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday".

8.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)" insert "fifteen minutes".

[Editorial change: IAC Supplement 2/21/24]

486—8.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the originating agency, to the board".

486—8.9(17A,22) Disclosures without the consent of the subject.

8.9(1) Open records are routinely disclosed without the consent of the subject.

8.9(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 8.10(22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

486—8.10(22) Routine use.

8.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

8.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the board or the originating agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

486—8.11(22) Consensual disclosure of confidential records.

8.11(1) *Consent to disclosure by a subject individual.* To the extent provided by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 8.7(17A,22).

8.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency to the extent permitted by law may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

486—8.12(22) Availability of records.

8.12(1) *General.* The agency records are open for public inspection and copying unless otherwise provided by rule or law.

8.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency.

b. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

c. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

486—8.13(22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

8.13(1) *Rule-making records.* Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. It cannot be retrieved by an individual identifier. It is not stored in a computer system.

During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained.

8.13(2) *Contested case records.* Contested case records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records.

Records are collected by authority of Iowa Code section 10A.601. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded on magnetic cassette tapes or in written transcripts.

These rules are intended to implement Iowa Code sections 22.7 and 22.11 and Iowa Code chapters 10A, 19A, 80, 88, 89A, 89B, 96 and 97.

[Filed emergency 8/11/88 after Notice 5/4/88—published 9/7/88, effective 8/11/88]
[Editorial change: IAC Supplement 2/21/24]

CHAPTER 9
IPERS APPEALS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

486—9.1(10A,97B) Appeals.

9.1(1) *Form and time of appeal.* Any party aggrieved by a decision of an administrative law judge of the department of inspections and appeals may file an appeal with the employment appeal board. The appeal must be filed within 30 days of the date of the decision of the administrative law judge.

9.1(2) *Taking the appeal.* The appeal shall be deemed filed if by U.S. Postal Service, the date of the postmark or date of meter mark if no postmark; if by facsimile transmission, the date of the fax transmission; if by any other method, the date received by the employment appeal board.

9.1(3) *Notice to agency.* Upon receipt of the appeal, the employment appeal board shall notify the department of personnel, IPERS division, of the appeal and shall provide a copy of the appeal to the department of personnel.

9.1(4) *Hearing.* The employment appeal board shall not conduct a new hearing on the matter on review. However, the board shall provide the parties with a transcript of the hearing held before the administrative law judge and shall provide the parties time to file written briefs on the issues.

9.1(5) *Continuances.* The parties will be allowed reasonable continuances for submission of written briefs and arguments. Requests for second continuances must be justified by good cause.

9.1(6) *Additional evidence.* The employment appeal board will not admit nor consider any new or additional evidence which was not submitted to the administrative law judge, unless the party submitting the new or additional evidence establishes good cause for not submitting the evidence at the evidentiary hearing.

9.1(7) *Decision.* The decision of the employment appeal board is the final agency decision for purposes of judicial review. The decision of the board becomes final 30 days after the date of the decision and not further reviewable unless a petition for judicial review is filed pursuant to Iowa Code section 17A.19.

The party aggrieved by a decision of the employment appeal board may file an application for rehearing before the employment appeal board within 20 days of the date of the board's decision. If an application for rehearing is filed, the date for judicial review is delayed until either 20 days from the date of filing the application for rehearing if no action has been taken by the board or 30 days from the date of denial by the board or deemed denied by operation of law.

This rule is intended to implement Iowa Code section 97B.27.

[Filed 6/29/98, Notice 4/8/98—published 7/29/98, effective 9/2/98]

CHAPTER 10

ELEVATOR APPEALS

Rescinded IAB 12/5/07, effective 1/9/08

CHAPTER 11

BOILERS AND UNFIRED STEAM PRESSURE VESSELS APPEALS

Rescinded IAB 12/5/07, effective 1/9/08