



Good Cause (Late Protest or Appeal)

What the law says: This issue is covered by Sections 32a, 33, and 34 of the *Michigan Employment Security Act*, Unemployment Insurance Agency (UIA) Administrative Rule 270, and the Michigan Compensation Appellate Commission's Administrative Rule 109.

When the UIA issues a "determination," either the unemployed worker or the employer (whichever party disagrees with the determination) may "protest" the determination and request a redetermination. Also, when the UIA issues a "redetermination," either party may "appeal" the redetermination to a hearing before an Administrative Law Judge.

To be received "timely" (on time), the signed or verified protest or appeal must be received by the UIA not later than the end of the 30th day after the date of mailing of the determination or redetermination. In counting the 30 days, every day of the week is counted beginning with the day after the determination or redetermination is mailed. Even weekend days and holidays are counted. But if the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, then the protest or appeal period ends at the end of the next day that is not a Saturday, Sunday, legal holiday, or Agency non-work day.

Late Protest of a Determination

If an unemployed worker or employer is late in filing the protest, the UIA must first determine whether there was "good cause" for filing late. Good cause can include inability to file due to illness, or having new information that was not available when the determination or redetermination was issued. If the UIA finds there was good cause for late filing, the UIA will issue a redetermination. If the UIA finds there was not good cause, the UIA will issue a "Denial." The Denial can be appealed directly to an Administrative Law Judge.

Late Appeal of a Redetermination

If an unemployed worker or employer is late in filing an appeal to an Administrative Law Judge, the case cannot be considered by the Administrative Law Judge. The Administrative Law Judge lacks

legal authority to hold a hearing when an appeal is filed late. The unemployed worker or employer may wish to withdraw (cancel) the appeal and request the UIA to reconsider the matter. The UIA must then find out whether there was "good cause" for the late filing of the appeal. If the UIA finds there was good cause for the late filing, the Agency will issue a redetermination. The redetermination can then be appealed (on time!) to the Administrative Law Judge. If the UIA finds there was not good cause, the office will issue a "denial." The denial can be appealed (on time!) directly to an Administrative Law Judge.

What Happens When A Denial Is Before the Administrative Law Judge

When a "denial" is before the Administrative Law Judge, the Administrative Law Judge must first decide whether the UIA was correct in issuing the Denial. (Again, the Denial says that there was not good cause for the lateness of the protest or request for reconsideration.) The Administrative Law Judge will probably want to hear details about the late filing and about the main issue in the case. If the Administrative Law Judge decides the UIA was right to issue the Denial, the Administrative Law Judge will issue a decision so stating. If the Administrative Law Judge decides there was good cause for the late filing, the Administrative Law Judge will issue a decision saying that and also deciding the main issue of the case. Either decision can be appealed to the Michigan Compensation Appellate Commission.

What court cases have said: Court cases have said that to be "filed" on time, the written and signed protest or appeal must be received by the UIA, the Michigan Compensation Appellate Commission or another employment security agency, by the end of the 30th day from the date the determination or redetermination was mailed or personally served. Mailing the protest or appeal is not enough. It must be received by the UIA by the 30th day.

Examples: The employer mailed an appeal to the UIA on Sunday, a day when mail is not collected. The following day, Monday, was the 30th day of the appeal period. Because the appeal was received late by the UIA, the employer will have to withdraw the appeal and request reconsideration by the UIA and explain why the appeal was late. Then the UIA must decide whether the employer had good cause for the late filing of the appeal.

Suppose the employer says he or she did not mail the appeal until the 29th day because the employer's regular bookkeeper had been out of town for two weeks. This will generally not be good cause for late filing of an appeal because the employer is still responsible for the actions of its employees.

Proof at the Hearing: If either the employer or the unemployed worker has been found to lack "good cause" for being "untimely" (late) in protesting a determination or appealing a redetermination to an Administrative Law Judge, then that party must show what the good cause was.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing on this issue. Call 1-800-638-3994, Item 2.

The information on this sheet is intended to provide a general understanding of the subject matter.

It does not have the force or effect of law or regulation.

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