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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 21, 2013

To: The Honorable David Y. Ige, Chair,
The Honorable Michelle N. Kidani, Vice Chair, and
Members of the Senate Committee on ways and Means

Date: Monday, March 25, 2013
Time: 9:05 a.m.
Place: Conference Room 211, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 0925 Relating to Employment Security Appeals Referee's Office

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 925 proposes to allow the Employment Security Appeals Referee's Office (ESARO) to provide interested parties with twelve (12) days' advance notice of the hearing and issues to be heard, as well as to permit parties to elect electronic notification of appeal notices, documents, and other correspondence in lieu of notice by mail.

The department strongly supports this Administration proposal.

II. CURRENT LAW

ESARO is required to provide fifteen (15) days' advance notice of the hearing and any issues to be heard to claimants and employers "unless otherwise provided by law" pursuant to section 91-9.5(a) of the Hawaii Revised Statutes (HRS). Section 12-5-93(c) of the Hawaii Administrative Rules reflects this statutory provision.

In implementing the same federal unemployment appeals program, other states have notice periods ranging from five (5) to eleven (11) days. Accordingly, claimants and employers in those states are potentially able to receive earlier hearing dates.

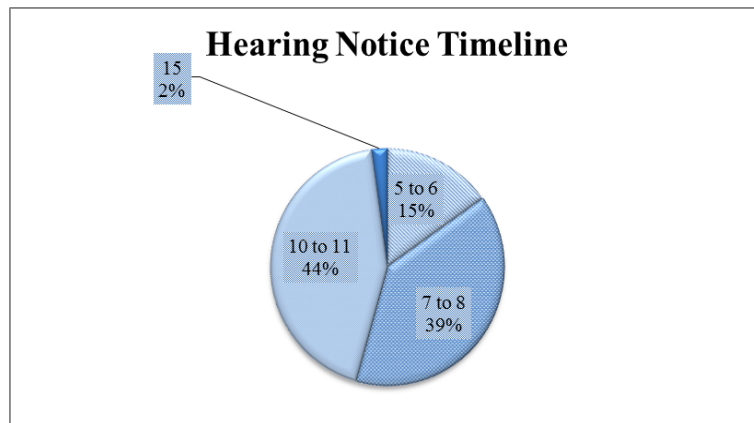
Pursuant to sections 91-9.5(a) and 383-38, HRS, hearing notices and decisions are sent by first class, non-registered, noncertified mail to the parties' last known address. No specific provision currently recognizes acceptance of electronic notice as equivalent to mailing for purposes of satisfying notice requirements and triggering further administrative and judicial appeal deadlines.

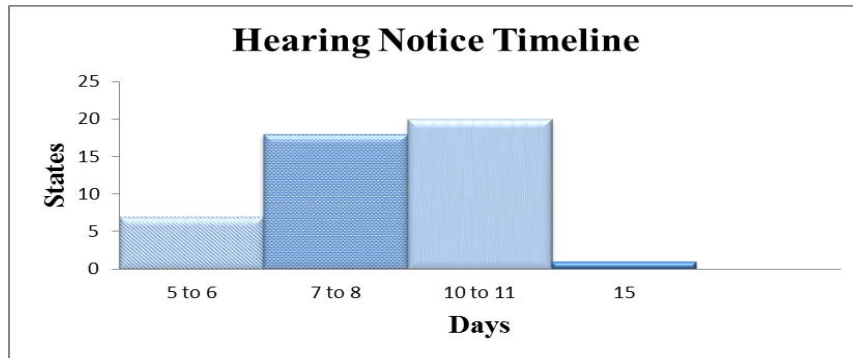
III. COMMENTS ON THE HOUSE BILL

The shorter minimum notice period would allow claimants and employers to have potentially earlier hearing dates while still requiring a longer notice period than other jurisdictions, and provide ESARO with flexibility in meeting federally required performance standards. Additionally, the specific recognition of electronic notice in lieu of mailing for those who voluntarily chose that method will save resources and establish a clear applicable date for calculating further appeal deadlines.

Pursuant to sections 303(a)(1) and (3) of the Social Security Act, procedures for appeals and hearings must be reasonably calculated to pay benefits promptly when due. To that end, applicable federal performance standards require ESARO to complete 60% of its decisions within 30 days of the appeal request, and 80% within 45 days. The current notice requirement consumes half of the 30-day completion period. Failure to meet performance standards can potentially result in federal oversight of the appeals program.

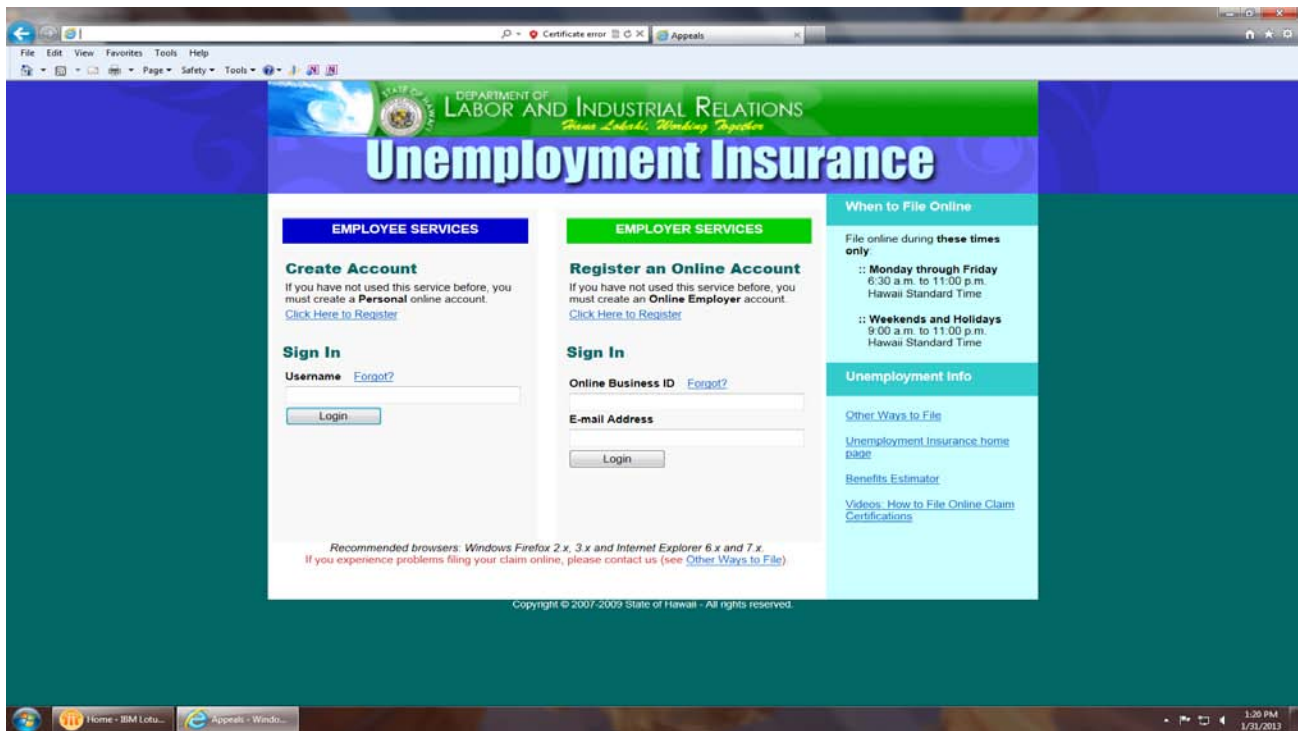
Hawaii is the only state with a statutory 15-day notice requirement:





The next closest state requirement after Hawaii's current fifteen-day notice requirement is eleven (11) days. Alaska, which presumably has similar geographical distance considerations for out-of-state participants, has a requirement of ten (10) days. If amended to the requested twelve (12) days, Hawaii would still have the longest minimum notice period while providing claimants and employers with a more timely hearing process consistent with the intent to pay benefits to *qualified* individuals promptly when due.

Regarding electronic notice in lieu of mail, ESARO will shortly launch an online appeal filing, scheduling, and maintenance system. Consistent with Governor Abercrombie's New Day Plan to transform government into an efficient and effective operation, the system will allow parties to file an appeal as a component of the current Unemployment Insurance Division's (UID) on-line filing system. The funding for the system is 100% federal funds.



The proposed statutory language in this bill specifically recognizes that electronic notification of notices and decisions is equal to notice by mail for those who voluntarily elect such notice. Specifically recognizing that the transmission date of the electronic notice is equivalent to a mailing date will eliminate any question from the parties, their representatives, and the court system, as to the governing date for further appeal proceedings.

Electronic notification would save both natural and financial resources by reducing paper usage and postage costs. Additionally, parties who receive electronic notice of their hearing, status changes, and decisions will benefit from greater mobility and accessibility, especially in situations where a residence or business address is in flux, or when a permanent mailing address is not readily accessible. It is important to note that this bill allows ESARO or the parties to rescind electronic notification status at any time, such as in cases of suspected identity abuse or for businesses, an unexpected change in personnel.

Your support of this measure is greatly appreciated.