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GOVERNOR

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EXECUTIVE ORDER NO. 012 2020

AN ORDER ESTABLISHING PROCEDURE FOR ADMINISTRATIVE APPEALS BEFORE THE OFFICE OF THE ADMINISTRATIVE LAW JUDGE OF DECISIONS RELATING TO THE PANDEMIC UNEMPLOYMENT ASSISTANCE AND FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION PROGRAMS

WHEREAS, the Federal Government has made available funds to assist American Samoa workers affected by the COVID-19 pandemic; and

WHEREAS, the U.S. Department of Labor has issued a legal opinion that the American Samoa Government (ASG) is to be bound by the Hawaii Employment Security Law in implementing its Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) program; and

WHEREAS, pursuant to Executive Order No. 002-2020, dated May 27, 2020, the Department of Human Resources has adopted the Hawaii Employment Security Law, as applicable in order to administer the PUA and FPUC programs in accordance with the terms set by the Federal Government; and

WHEREAS, section 303(a)(3) of the Federal Social Security Act requires that the “opportunity for a fair hearing, before an impartial tribunal, for all individuals who claims for unemployment compensation are denied” be provided; and

WHEREAS, any disqualifying determination regarding a claimant’s eligibility for PUA and FPUC benefits is therefore subject to an appeal; and

WHEREAS, the American Samoa Department of Human Resources has already made final agency determinations regarding certain claimants’ ineligibility after reconsidering its original determination regarding such claimants’ PUA and FPUC benefits; and

WHEREAS, “[a]ll appeals from administrative rulings or decisions of any administrative agency . . . of a department . . . of the Executive branch or the American Samoa Government, shall first be made to the Office of the Administrative Law Judge” pursuant to the American Samoa Code Annotated § 4.0604(h);

WHEREAS, “[a]ny other contested case, grievance or controversy that agencies, offices and departments of the government may be referred to the Office of Administrative Law Judge for disposition providing that the Office of Administrative Law Judge has jurisdiction over such matter” pursuant to the American Samoa Code Annotated § 4.0604(g);

NOW THEREFORE, I, LOLO M. MOLIGA, Governor of American Samoa, by virtue of the power vested in me by the American Samoa Revised Constitution Art. IV, Section 6 and 7, the American Samoa Code Annotated §§ 4.0111 and 26.0105, and in accordance with the Administrative Law Judge Act of 1998, do hereby order and direct as follows:

1. For the avoidance of doubt, the Office of the Administrative Law Judge shall have jurisdiction to conduct hearings and issue decisions with regards to appeals of reconsiderations of PUA and FPUC benefit determinations issued by the Department of Human Resources.
 - a. If a claimant is denied benefits after submitting an application and disagrees with the “Notice of Determination on Pandemic Unemployment Assistance Claim” issued by the Department of Human Resources, the claimant may request a final decision, or reconsideration, by the Department of Human Resources by submitting the Request of Reconsideration Form and all relevant documents to the Department of Human Resources at Room 102 of the AP Lutali Executive Office Building in the Village of Utulei, within ten (10) calendar days after the determination was mailed to the claimant.
 - b. If a claimant is denied benefits again upon reconsideration and disagrees with the “Notice of Final Decision of Pandemic Unemployment Assistance Claim” issued by the Department of Human Resources, the claimant may seek an appeal with the Office of the Administrative Law Judge, at the Administrative Law Building at Tolu Street, in the Village of Tafuna, with ten (10) calendar days after the final decision was mailed to the claimant.
 - c. Appeals must be filed *directly* with the Office of the Administrative Law Judge within ten (10) calendar days from the mailing date of the final reconsideration decision. Timely appeals must be in writing and must include true and accurate copies of (i) the claimant’s application, (ii) the Notice of Determination on Pandemic Unemployment Assistance Claim, and (iii) the Notice of Final Decision of Pandemic Unemployment Assistance Claim. Claimants must comply with all filing rules and procedures of the Office of the Administrative Law Judge, including the payment of a \$50 filing fee and applicable service requirements.
 - d. Appeals cases with regards to reconsiderations of PUA and FPUC benefit determinations before the Administrative Law Judge shall be heard on a *de novo* basis within thirty (30) working days of filing or as soon as practicable.

2. With ten (10) calendar days of the signing of this Executive Order, the Department of Human Resources shall reissue any reconsideration decisions issued to date and notify claimants who have received reconsideration decisions of the appeals procedure outlined herein. To the extent a claimant had received a reconsideration decision prior to the date hereof, the deadline to file an appeal directly with the Office of the Administrative Law Judge outlined in paragraph 1(c) above shall be measured from the date of the reissued reconsideration decision with updated appeals procedure. The Department of Human Resources shall also revise any materials publicly available on its website and any notices to claimants not yet issued to be consistent with this Executive Order.
3. To the extent that any official handbook, form or other document promulgated by the Department of Human Resources conflicts with the procedure outlined in this Executive Order in any respect, the terms of this Executive Order shall control.

This Executive Order shall take effect immediately upon signing and shall remain in effect until further order of the Governor or completion of the PUA and FPUC programs.

Dated: December 11, 2020.



Lolo M. Moliga
Governor of American Samoa