

How to File a Superior Court Appeal

The Unemployment Law Project is a small non-profit law office with limited resources, so we are unable to assist with Superior Court appeals in most cases. We hope that this brochure will answer some of your questions. Please note that the information provided in this brochure does not constitute legal advice; it is intended for general information only.

What is a Petition for Judicial Review?

After filing a Petition for Review of the Initial Order, you will receive a Decision of Commissioner. If you disagree with this decision, you may appeal your case to a state Superior Court. This is called a “Judicial Review.”¹ It can be filed in either the Superior Court of the county where you live or in Thurston County Superior Court in Olympia. There should be no charge for filing a Petition for Judicial Review from an administrative decision regarding a claim for unemployment insurance benefits. *See* RCW 50.32.110.

What is the deadline for filing a Petition for Judicial Review?

The deadline for a Petition for Judicial Review is thirty (30) days. **You must file your case in Superior Court and serve all interested parties within 30 days.** An interested party refers to anyone who was listed under the original hearing. They can be your former employers and their representatives. Please note that the Employment Security Department (ESD) and Attorney General’s Office is always considered interested party. If all parties have not received the Petition for Judicial Review by the 30th day, the case will be dismissed even if there is a good reason for it being late.

What do I need to prepare to file a Petition for Judicial Review?

When filing the petition, you must include the following information:

1. **Case Information Cover Sheet:** This form is provided by the Washington State Court. You can download it on the Court’s website or by visiting this link: <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=59>. A sample form is also provided with these instructions.
2. **Copy of your Decision of Commissioner:** This is the decision you should have received after filing your Petition for Review.
3. **Petition for Judicial Review:** This is your intent to appeal the Commissioner’s Decision. An example is provided at the end of this guide.

¹ If you need assistance writing a Petition for Review, please review “How to File a Petition for Review”.

How do I file the Petition for Judicial Review?

Once you've completed the Case Information Cover Sheet and Petition for Judicial Review, make a copy for each party (including for yourself) of the coversheet, your Petition for Judicial Review, and the Decision of Commissioner.

Next, take all your copies to the Superior Court Clerk's Office in your own county or Thurston County. You will file the original copy with the Clerk's Office. Once it is filed, the clerk will stamp the record with the date and case number. Use the case number stamp and date stamp to stamp all of your other copies with the case number and date to show it was filed with the court.

How do I serve² the Petition for Judicial Review?

You may "serve" the Petition for Judicial Review either in person³ or by mail. Please be sure to "serve" all interested parties, including the Employment Security Department, the Attorney General, and any other parties. Please check the Decision of Commissioner for the correct addresses.

In Person: If you want to "serve" it in person, the delivery must be done by anyone other than yourself who is at least eighteen years old. You may also hire a legal messenger, but you will have to pay for this service.

Mail: You can also "serve" all interested parties via mail. If you mail the Petition for Judicial Review, you must use certified mail so that you have proof it was delivered on time.

Please be sure to keep a copy of the Petition for Judicial Review, your mailing receipts, and confirmation of certified mail for your records. You may be asked to show that they were delivered BEFORE the deadline. **The copies must be received by all parties by the due date.** If they are not received by the deadline, your case will be dismissed, and you will lose.

What happens after I file the Petition for Judicial Review?

1. **Notice of Appearance:** After you file your appeal, you will receive a Notice of Appearance from an Assistant Attorney General (AAG), who will be representing the Employment Security Department. Please review the document because it will include a phone number, mailing address, and email address of the AAG. You must send further documents you file with the court to the AAG listed.

² Serving a party means sending them the documents you have filed in court.

³ Please be advised that in person service may not be accepted due to a temporary closure.

2. **E-Service Agreement:** You may receive an Electronic Service Agreement (E-Service Agreement) from the AAG. This document is an agreement between you and the Assistant Attorney General that documents filed in this case may be served by email.
3. **Commissioner's Record:** Once your appeal has been filed, you will receive a packet called the Commissioner's Record. This record will include a transcript of your hearing, evidence submitted for your initial hearing, and the decisions in your case. If you do not receive the Commissioner's Record within approximately a month of filing your appeal, you may contact the Assistant Attorney General to inquire about the copy.
4. **Setting your case for trial:**

For cases filed before June 13, 2021:

- a. **King County:** If you filed in King County, you should have received a Case Schedule when you filed your Petition for Judicial Review. It should include the deadline for submitting your opening brief, when the AAG should submit their response brief, and your argument date. Please review the document and be sure to follow the timeline provided in the Case Schedule.
- b. **Thurston County:** If you filed your case in Thurston County, you should have received a trial setting date and a scheduling questionnaire. Complete the scheduling questionnaire and submit it to the Court. Be sure to send a copy to all interested parties. After the trial setting date, you should be provided with the case schedule, which includes the deadline for submitting your opening brief, when the AAG should submit their response brief, and your argument date.
- c. **Other Counties:** If you filed your Petition for Judicial Review in a different county, please check with that county's court clerk and ask what the procedure is. The court clerk's contact is available on their website.

For cases filed after June 13, 2021: This instruction applies if you filed your Petition for Judicial Review after June 13, 2021. In 2021, SB 5225 was passed affecting the administrative appeals process. *See* RCW 34.05.514. The law authorizes the Superior Court to certify some judicial review cases brought under the Administrative Procedure Act (APA) to be directly reviewed by the Court of Appeals.⁴ Unemployment appeals are included in this Bill.

- d. **King County:** After you file your Petition for Judicial Review, you will need to note your case on the Chief Civil calendar. To note your case on the Chief Civil calendar,

⁴ If you would like to review the Senate Bill 5225 (SB 5225), please visit Washington State Legislature's website at <https://app.leg.wa.gov>.

you will need a “Notice of Court Date – Ex Parte” and a short motion. The motion should address whether your case should remain in a superior court or be transferred to the Court of Appeals. For more information, please review the “Notice Regarding Administrative Law Review Cases” that you received when you filed your case or contact the court clerk for further instruction. Failure to note your case before the deadline may cause your case to be dismissed.

- e. **Thurston County:** If you filed your case in Thurston County, you should have received a trial setting date and a scheduling questionnaire. Complete the scheduling questionnaire and submit it to the Court. You will notice that the questionnaire will ask you to decide whether you wish to be heard in Superior Court or transfer the case to the Court of Appeals. Once filed, please be sure to follow instructions from the Court. If you have not heard about the status of your case, you can reach out to the court clerk or the AAG assigned to your case.
 - f. **Other Counties:** If you filed your Petition for Judicial Review in different county, please check with that county’s court clerk and ask what the procedure is for setting the case for trial. The court clerk’s contact is available on their website.
5. **Opening Brief:** A brief is a written document that outlines the facts of the case and your legal argument – the reasons why you believe you are entitled to benefits and why the decision is wrong. Depending on where your case will be heard – Superior Court or Court of Appeals – there are different guidelines for formatting your brief. You will need to review formatting guidelines either in your county or the Court of Appeals. For your case research, you may review:
- A. Revised Code of Washington (RCW) – <https://apps.leg.wa.gov/rcw/>
 - B. Washington Administrative Code (WAC) – <https://apps.leg.wa.gov/wac>
 - C. Prior Decisions of Commissioner in unemployment benefits - https://govt.westlaw.com/wapcd/Index?__lrTS=20160628183455373
6. **Oral Argument:** The oral argument will be your time to explain to the court why you think you should be allowed benefits. The burden is on you to prove that the ESD Decision of Commissioner is wrong. You will not be able to present new evidence. Instead, you will focus on information included in the Commissioner’s Record. Your argument should be less than 15 minutes. Next, the AAG will be given an opportunity to respond. Do not interrupt the AAG while they are presenting their case. Once they are finished, you will be given between 1-2 minutes to respond to the AAG’s argument. Once both sides present their arguments, the Court will likely make a decision.

Case Information Cover Sheet Sample: For an unemployment appeal, you should select “Administrative Law Review.” This is only a sample page. For a full cover sheet, please visit <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=59>. If you are filing your case in King County, please visit <https://kingcounty.gov/courts/clerk/forms.aspx>.

CIVIL

COUNTY SUPERIOR COURT

Case Information Cover Sheet (CICS)

Case Number _____ **Case Title** _____

Attorney Name _____ **Bar Membership Number** _____

Alternate Email Address: _____

(New Case Number will be Sent to this Email Address)

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

- | | |
|---|--|
| <input type="checkbox"/> ABJ Abstract of Judgment | <input type="checkbox"/> PRG Property Damage – Gangs |
| <input checked="" type="checkbox"/> ALR Administrative Law Review | <input type="checkbox"/> PRP Property Damages |
| <input type="checkbox"/> ALRJT Administrative Law Review-Jury Trial (L&I) | <input type="checkbox"/> QTI Quiet Title |
| <input type="checkbox"/> CRP Petition for Certificate of Restoration of Opportunity | <input type="checkbox"/> RDR Relief from Duty to Register |
| <input type="checkbox"/> CHN Non-Confidential Change of Name | <input type="checkbox"/> RFR Restoration of Firearm Rights |
| <input type="checkbox"/> COL Collection | <input type="checkbox"/> SDR School District-Required Action Plan |
| <input type="checkbox"/> CON Condemnation | <input type="checkbox"/> SPC Seizure of Property-Commission of Crime |
| <input type="checkbox"/> COM Commercial | <input type="checkbox"/> SPR Seizure of Property-Resulting from Crime |
| <input type="checkbox"/> DOL Appeal Licensing Revocation | <input type="checkbox"/> STK Stalking Petition |
| <input type="checkbox"/> DVP Domestic Violence | <input type="checkbox"/> SXP Sexual Assault Protection |
| <input type="checkbox"/> EOM Emancipation of Minor | <input type="checkbox"/> TAX Employment Security Tax Warrant |
| <input type="checkbox"/> FJU Foreign Judgment | <input type="checkbox"/> TAX L & I Tax Warrant |
| <input type="checkbox"/> FOR Foreclosure | <input type="checkbox"/> TAX Licensing Tax Warrant |
| <input type="checkbox"/> FPO Foreign Protection Order | <input type="checkbox"/> TAX Revenue Tax Warrant |
| <input type="checkbox"/> HAR Unlawful Harassment | <input type="checkbox"/> TMV Tort – Motor Vehicle |
| <input type="checkbox"/> INJ Injunction | <input type="checkbox"/> TRJ Transcript of Judgment |
| <input type="checkbox"/> INT Interpleader | <input type="checkbox"/> TTO Tort – Other |
| <input type="checkbox"/> LCA Lower Court Appeal – Civil | <input type="checkbox"/> TXF Tax Foreclosure |
| <input type="checkbox"/> LCI Lower Court Appeal – Infractions | <input type="checkbox"/> UND Unlawful Detainer – Commercial |
| <input type="checkbox"/> LUPA Land Use Petition Act | <input type="checkbox"/> UND Unlawful Detainer – Residential |
| <input type="checkbox"/> MAL Other Malpractice | <input type="checkbox"/> VAP Vulnerable Adult Protection Order |
| <input type="checkbox"/> MED Medical Malpractice | <input type="checkbox"/> VVT Victims of Motor Vehicle Theft-Civil Action |
| <input type="checkbox"/> MHA Malicious Harassment | <input type="checkbox"/> WDE Wrongful Death |
| <input type="checkbox"/> MSC2 Miscellaneous – Civil | <input type="checkbox"/> WHC Writ of Habeas Corpus |
| <input type="checkbox"/> MST2 Minor Settlement – Civil (No Guardianship) | <input type="checkbox"/> WMW Miscellaneous Writs |
| <input type="checkbox"/> PCC Petition for Civil Commitment (Sexual Predator) | <input type="checkbox"/> WRM Writ of Mandamus |
| <input type="checkbox"/> PFA Property Fairness Act | <input type="checkbox"/> WRR Writ of Restitution |
| <input type="checkbox"/> PIN Personal Injury | <input type="checkbox"/> WRV Writ of Review |
| <input type="checkbox"/> PRA Public Records Act | <input type="checkbox"/> XRP Extreme Risk Protection Order |

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Please Note: Public information in court files and pleadings may be posted on a public Web site.

Petition for Judicial Review Sample: This is only a sample. Please leave the case number blank as it will be provided by the clerk after you file the petition. A word version of this can be found at <https://unemploymentlawproject.org/self-help/>

STATE OF WASHINGTON

_____ **COUNTY SUPERIOR COURT**

YOUR NAME,

Petitioner,

and

STATE OF WASHINGTON, EMPLOYMENT
SECURITY DEPARTMENT,

Respondent.

Case No.:

PETITION FOR JUDICIAL REVIEW

NO FILING FEE REQUIRED

RCW 50.32.110

Petitioner, _____, petitions the court, pursuant to RCW 34.05.570 et. Seq. and RCW 50.32.160, for review of the decision of the Respondent, Employment Security Department Review Judge _____, entered against the Petitioner on _____, Review No. _____. At issue is ESD decision to _____

The parties involved in the adjudicative proceedings are now: Petitioner, _____, Pro Se; Respondent Employment Security Department, represented by the Attorney General; and _____.

Petitioner is entitled to relief pursuant to RCW 34.05.570(3) because: (*Select All*)

- a) The order, or the statute or rule on which the order is based is in violation of constitutional provision on its face or as applied;
- b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
- c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

- d) The agency has erroneously interpreted or applied the law;
- e) The order is not supported by evidence that is substantial when reviewed in light of the whole record before the court, which includes the agency record for the judicial review, supplemented by any additional evidence received by the court under this chapter;
- f) The agency has not decided all issues requiring resolution by the agency;
- g) A motion for disqualification under RCW 34.05.425 or RCW 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;
- h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or
- i) The order is arbitrary or capricious.

Petitioner is entitled to relief under legal reasons because _____

 (write why your case entitles you to relief under the legal reasons checked above)

Additionally, the petitioner has standing, has exhausted all available administrative remedies, and has timely filed this Petition for Review. Petitioner, also pursuant to RCW 35.05.510 et. seq., asks that this matter be set for oral argument and that Petitioner be allowed to submit a written brief prior to the oral argument.

WHEREFORE, Petitioner asks for judgement:

1. Reversing Respondent's decision contained in ESD Review No. _____.
2. Awarding any further relief this Court deems proper.

DATED THIS on _____

 [YOUR NAME], Petitioner, Pro Se