

Pandemic Unemployment Assistance and No Hearing or No Response

Instructions for Other Counties

Under Nevada law, you can file a petition for writ of mandamus if a state agency does not comply with state or federal law and you do not have any legal recourse. This will allow the court to force the state agency to comply with the law if the court agrees with you. These instructions cover an application for Pandemic Unemployment Assistance (PUA) when you have not received any hearing on your denial of PUA or have not received any response on your PUA application.

Under federal and state law, the Nevada Employment Security Division (ESD), which is a division of the Nevada Department of Employment, Training, and Rehabilitation (DET), must process applications for federal and state benefits, like PUA, "when due and as soon as administratively feasible." This means your PUA application should be processed in 14 days. The U.S. Supreme Court has said that 7 weeks denies the constitutional right to procedural due process of law. ESD has taken much longer and you can file the writ to challenge ESD's inactivity because it is illegal and unconstitutional.

Reality Check: by reading this information and filing the writ of mandamus, you will know more than most Nevada judges. Therefore, be advised that filing the writ is half the battle. You will have to follow up with the judge assigned to your case to get a hearing and a decision.

Documents you need: (1) civil cover sheet, (2) fee waiver or fee payment, (3) petition for writ of mandamus. You will also have to mail a copy of the writ to DETR/ESD and the Nevada Attorney General's Office. The addresses are contained in the writ. If you do not use the fillable PDF form, fill it out with a pen and try to be as neat as possible. We reference the page and line number corresponding to the blanks in the form. The writ petition explains the writ process so please read it carefully.

Filling out the Writ Petition Form

Page 1 of Petition:

Write in the Number of the Judicial District you are filing in and the name of the County. Your name goes on line 7. On line 15, put your name again.

The day, month, and year (or DMY) of your application for PUA goes on line 24. Put when you were denied (DMY) on line 24 (if applicable).

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On line 3, enter the number of months since you applied.

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When you applied (DMY) for PUA goes on line 21.

On line 22, put when you were denied (DMY) (if applicable).

On line 23, put when you appealed and requested a hearing (DMY) (if applicable).

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Put how long it has been since you applied for PUA in months on line 5.

On line 6, enter how long it has been seen you have been without benefits (in months beginning when you lost your gig work or had to stay home because of Pandemic).

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On line 3, enter the DMY of when you applied and how many months that has been.

On line 4, put when you appealed (DMY) and how long ago that has been (if applicable).

On line 8, again put how many months it has been since you applied for PUA.

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Put when you applied (DMY) for PUA on line 11.

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Enter how long it has been in months since you applied for PUA on line 6.

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Enter the date of filing the Petition (DMY) on line 5.

You will print out and sign the Petition on line 8. If you are filing in the Eleventh Judicial District (Pershing, Mineral or Lander County), you can electronically file your petition. This means that you can electronically sign your petition by typing /s/ Your Name. You can request an efilng account here: <https://go.tybera.net/nv/> and more information about efilng is accessible on the court's website: <http://eleventhjudicialdistrict.com/>).

Put your name on line 9, with your address and other contact information underneath.

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Line 2 should contain the DMY of filing your Petition. You should mail a copy of the Petition to the addresses listed the same day you file the Petition. It does not need to be filed stamped by the court before you mail it. But you do need to mail it the same day you file the Petition.

Sign on line 11 to certify you mailed the Petition.

Congratulations! You have completed the Petition for a Writ of Mandamus.

Now, you must mail a copy of the Petition to the Employment Security Division and the Attorney General's Office. Again, this should be done before you file.

Filing

As indicated above, there is electronic filing in Pershing, Lander and Mineral Counties. You will need to paper file in the other counties. During the COVID pandemic, some courts are allowing filing by email. Please check with your court's clerk to determine the proper method for filing your petition. The clerk cannot give you legal advice but can tell you the proper process to file. Each court also has a website containing information on the address to mail your petition and contact information for the clerk's office. The court's website may also contain forms for the Civil Cover Sheet and Application to Waive the Filing Fee.

In all counties, in order to file the Petition you will still need:

- 1) the Civil Cover Sheet
- 2) fee payment or Application to Waive the Fee and
- 3) 2 copies of the writ petition and a self addressed, postage prepaid, envelope so the clerk can mail a copy of the writ petition back to you.

The filing fee is \$265, but you can seek a fee waiver. However, the fee waiver will take time before the judge considers it. If paying, the fee must be included with the paper writ (check or money order, no cash) or you can use a credit card if paying in person.

What happens next?

Find the department the case has been assigned to and call the clerk or assistant and see if the judge will set a hearing. As the writ sets out, the judge can do one of three things:

- 1) Grant the writ and order the hearing, benefits, or both;
- 2) Deny the writ and you lose. You may appeal, but should contact Nevada Legal Services for help;
- 3) Grant a hearing and/or set a briefing schedule.

Option 3 is the most likely. Since your argument is contained in the writ, you should submit your writ again if the judge wants a brief. You should also attend your hearing. The Attorney General will have a chance to oppose the writ and the judge will decide.

If you do not hear anything from the court in a few weeks after filing, you may need to file a Request to Submit the matter to the judge. We have also provided a form Writ of Mandamus that you can attach to your Request to Submit to the court.

We cannot emphasize enough that filing a writ is difficult and the chances of success may not be great. Yet, when you have no response from ESD and are struggling to make ends meet, this writ may be your only option.

For any follow up questions regarding these instructions or the Petition form, please feel free to send an email to puawritnow@gmail.com. Please be advised that NO legal advice will be given but we can answer technical questions and provide legal information regarding this form. If you believe you need legal representation, feel free to submit an online intake to see if you qualify for services from Nevada Legal Services at nevadalegalservices.org and click the link to our online intake system. Or you may contact the Nevada State Bar's Lawyer Referral Service at 800-789-5747.