

**DRAFT RULES
PATTERN OF EMPLOYER NONRESPONSE**

7.4 PATTERN OF FAILING TO RESPOND

7.4.1 Statutory References: 8-79-102(5)(a), C.R.S.

7.4.2 DEFINITIONS

.1 TIMELY. AS USED IN THIS SECTION, MEANS THOSE ACTS COMPLETED BY THE EMPLOYER WITHIN THE TIME PERIOD PERMITTED BY LAW.

.2 ADEQUATE. AS USED IN THIS SECTION, REFERS TO THAT INFORMATION PROVIDED BY AN EMPLOYER TO A DIVISION REQUEST WHICH IS SUFFICIENT TO SUPPORT A DETERMINATION ON THE ISSUE.

7.4.3 PATTERN OF FAILING TO RESPOND. A “PATTERN OF FAILING TO RESPOND TIMELY OR ADEQUATELY” AS REFERENCED UNDER §8-79-102(5)(A)(II) C.R.S. REFERS TO A REPEATED, DOCUMENTED FAILURE ON THE PART OF THE EMPLOYER OR THE AGENT OF THE EMPLOYER TO RESPOND TIMELY OR ADEQUATELY TO REQUESTS FOR INFORMATION FROM THE DIVISION, TAKING INTO CONSIDERATION THE NUMBER OF INSTANCES OF FAILURE IN RELATION TO THE TOTAL VOLUME OF REQUESTS. THE DETERMINATION OF WHETHER SUCH A PATTERN HAS BEEN SHOWN SHALL BE AT THE DISCRETION OF THE DIVISION EXCEPT THAT:

.1 AN EMPLOYER OR ITS AGENT SHALL NOT BE DETERMINED TO HAVE ENGAGED IN A “PATTERN OF FAILING TO RESPOND TIMELY OR ADEQUATELY” IF THE NUMBER OF SUCH FAILURES DURING THE YEAR PRIOR TO SUCH REQUEST IS FEWER THAN THREE OR LESS THAN THREE PERCENT OF SUCH REQUESTS, WHICH EVER IS GREATER.

. 2 AN AGENT, REPRESENTING TWO OR MORE EMPLOYERS, SHALL NOT BE DETERMINED TO HAVE ENGAGED IN A PATTERN OF FAILING TO RESPOND TIMELY OR ADEQUATELY IN RELATION TO THE TOTAL VOLUME OF REQUESTS COLLECTIVELY SENT TO THE AGENT. INSTEAD, EACH SPECIFIC EMPLOYER ACCOUNT SHALL BE SUBJECT TO THE DETERMINATION.

7.4.4 APPEALS. DETERMINATIONS BY THE DIVISION UNDER THIS SECTION SHALL BE SUBJECT TO APPEAL IN THE SAME MANNER AS OTHER DETERMINATIONS OF THE DIVISION.