

A GUIDE TO ADMINISTRATIVE HEARINGS

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

WAGE STANDARDS DIVISION



Wage Standards Division
Hearings Branch

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VISION

The Hearings Branch of the Wage Standards Division is committed to improving the quality of work life for all people by assuring lawful working environments where the rights and benefits of everyone are respected.

MISSION

The mission of the Hearings Branch is to:

- Provide a neutral and impartial forum in which the parties may achieve a mutually agreeable solution to their disputes.
- Conduct hearings in a fair, effective and efficient manner.
- Render sound and equitable decisions in a timely fashion.

A GUIDE TO ADMINISTRATIVE HEARINGS

This guide has been developed to assist interested parties in preparing for an administrative hearing conducted by the Hearings Branch of the Department of Labor and Industrial Relations (DLIR), Wage Standards Division (WSD). This general guide does not supersede any statute, department rule or any laws that may be applicable.

An administrative hearing is a formal proceeding where evidence is taken and witnesses are heard to determine issues of fact and to render a decision on a complaint or appeal based on the evidence and testimony presented. It is conducted by a hearings officer who acts as a neutral third party and gives everyone a fair opportunity to be heard. In general, as a neutral party, the hearings officer shall not initiate, permit, or consider *ex parte* communications outside the presence of all of the parties about the merits of the case other than at the time of the prehearing/hearing.

There are two types of situations where an administrative hearing may be held:

1. **Complaints** filed under Chapter 378, Hawaii Revised Statutes (HRS), Employment Practices Law, Part III, Unlawful Suspension or Discharge. Under this law, an employee (Complainant) may file a complaint alleging that s/he was unlawfully suspended, discharged, or discriminated against by the employer (Respondent) solely because of a compensable work injury *or* because the employee tested positive on a substance abuse on-site screening test.

2. **Appeals** filed under:
 - Chapter 104, HRS, Wages and Hours of Employees on Public Works Law. Under this law, a contractor (Appellant) may appeal a Notification of Violation (NOV) issued by the DLIR (Appellee).

 - Chapter 398, HRS, Family Leave Law. Under this law, an employer (Appellant) may appeal an order issued by the DLIR (Appellee).

Once a complaint or an appeal is filed, it may proceed through a two-step process:

1. Prehearing conference

2. Formal hearing

PREHEARING CONFERENCE

The prehearing conference is an informal meeting between a hearings officer and the parties; that is, Complainant and Respondent or Appellant and Appellee, prior to the formal hearing. The purpose of the prehearing conference is to simplify the issues and consider matters that may aid in the disposition of the case. It is also an ideal opportunity for the parties to discuss and negotiate a satisfactory resolution of the dispute. A settlement may help the parties avoid the time, expense, and procedural constraints of a formal hearing. You will be notified as to when the prehearing conference will be held.

When You Receive the Prehearing Conference Notice

1. Read the notice carefully. It gives you the time, date and place of the prehearing conference and specific instructions for participation.
2. If you are unable to attend the prehearing conference as scheduled or wish to reschedule, you must notify the Hearings Branch as soon as possible but no later than one day (two days for neighbor islands) prior to the prehearing conference date.

At the Prehearing Conference

1. **BE ON TIME!**
2. Any matter not raised by the parties at the prehearing conference shall not be allowed during the formal hearing. Matters that may be discussed include issues raised by the Complainant or Appellant, explanations and defenses of the Respondent or Appellee, amendments to the pleadings, stipulations to avoid unnecessary proof, and the possibility of a settlement.
3. The parties will be encouraged to resolve the dispute. If a satisfactory resolution of the dispute cannot be achieved, a date and time for the formal hearing will be set. In preparation for the formal hearing, the hearings officer will set a deadline for the exchange between the parties of exhibits, list of witnesses, and affidavits, if any, that they expect to use at the hearing. One copy of each party's documents (exhibits, list of witnesses, and affidavits, if any) along with a certificate of service, that is, proof that the documents identified were properly mailed or delivered to the other party or parties, must be filed with the hearings officer by the same deadline.

4. The need for subpoenas may be discussed with the hearings officer. A subpoena is an order commanding a person to appear at the hearing. A subpoena duces tecum is an order commanding a person to appear and to produce the documents or records identified in the subpoena. Subpoenas are typically served by the sheriff or other authorized person. The cost of serving the subpoena is paid by the party requesting the subpoena.

HEARING

The hearing is a formal administrative proceeding where evidence is taken and witnesses are heard to determine issues of fact. Hearings are held in accordance with Chapter 91, HRS, Administrative Procedure. A hearings officer will render a decision on the basis of all the evidence and testimony presented.

Preparing for the Hearing

1. If you plan to have any witnesses, you should give them reasonable advance notice that they are required to attend the hearing. You may need to prepare subpoenas to have witnesses appear at the hearing or obtain affidavits from those witnesses who are unable to attend. If your witness is unable to attend in person, but can testify by telephone at the time of the hearing, you must obtain approval from the hearings officer for such testimony prior to the hearing.
2. You need to make two copies of all documentary evidence you plan to present at the hearing. Documentary evidence includes forms, letters, and other similar material in support of your position. Exchange one copy with the other party and submit a copy to the hearings officer. You may need to prepare a subpoena duces tecum to obtain documentary evidence you do not have.
3. Allow at least seven days for the subpoena or subpoena duces tecum to be served.
4. You must comply with all deadlines established by the hearings officer at the prehearing conference.
5. Upon receiving the Notice of Hearing, read it carefully. It gives you the time, date, and place of the hearing along with specific instructions for participation.

6. If you are unable to attend the hearing as scheduled or wish to reschedule, you must notify the Hearings Branch as soon as possible but no later than three working days (five working days for neighbor islands) prior to the hearing date. Failure to do so may result in dismissal of the complaint or appeal, or a decision based on evidence submitted by the party in attendance.

At the Hearing

1. **BE ON TIME!** You and your witnesses must be ready to proceed.
2. You will have the opportunity to present evidence and arguments on the issues involved. You will also have the opportunity to cross-examine all witnesses.
3. You should know what you are trying to prove and present your case simply and clearly, backed by solid evidence.
4. You should keep these questions in mind: who, what, when, where, how, to what extent and to what degree?
5. Stick to the issues. Present the essential points, and support them with your exhibits or the testimony of your witness(es). Avoid confusing the issue with irrelevant information.
6. Very often, people are tempted to oppose every point the other side makes without regard to the outcome. Some points may not affect the hearings officer's decision. Focus on the key issues of the case.
7. Avoid using technical terms, occupational jargon, abbreviations, and symbols which may confuse the hearings officer and others at the hearing.
8. The weight of evidence is not determined by the amount of testimony. Therefore, the number of witnesses to testify about the same facts may be limited. Call witnesses with the most reliable, first-hand knowledge of the situation. Character witnesses may testify to a party's integrity, but they may not know the facts of the case.
9. If you forgot to mention something pertinent to your case, tell the hearings officer before the hearing ends.

DECISION

1. For complaints heard under Part III, Chapter 378, HRS, a recommended decision will be issued by the hearings officer. If you do not agree with the recommended decision, you may file exceptions to the decision and request a review with the Director of the Department of Labor and Industrial Relations. You have twenty days after receiving the recommended decision to do this. After reviewing any exceptions filed, the Director will issue a final decision.

If no exceptions are filed within the time specified, the recommended decision shall become final. If you do not agree with the final decision, you may appeal the decision to the State Circuit Court within thirty days after service of the decision as provided in Section 91-14, HRS.

2. For appeals heard under Chapter 104, HRS, the hearings officer renders the final decision. The law requires that the decision be rendered within sixty days after the conclusion of the hearing.

If you do not agree with the hearings officer's decision, you may appeal the decision to the State Circuit Court within thirty days after service of the decision as provided in Section 91-14, HRS.

Good luck!

GLOSSARY

Affidavit: Instead of having a witness or witnesses appear at the hearing, the parties may have their witness or witnesses provide a written statement of facts voluntarily made under oath or affirmation and based on personal knowledge. The affidavit must be signed by the witness before a notary public.

Burden of Proof: It is the obligation of a party to introduce evidence sufficient to either prove or disprove the existence or nonexistence of a fact or facts in dispute on an issue raised between the parties.

Cross-Examination: The examination or questioning of a witness or witnesses by the other (opposing) party about the facts and matters within the scope of the witness or witnesses' direct examination.

Evidence: Is used to sustain or support a party's position whether it be the Complainant's, the Respondent's, the Appellant's, or the Appellee's. Evidence is usually presented at the formal hearing and typically of two types:

Documentary evidence consists of something concrete such as documents, records, and other similar materials.

Testimonial evidence is statements made under oath by individuals testifying at the hearing.

Ex Parte Communication: Communication with the hearings officer by a party without the knowledge of or outside the presence of the other party. No party or person shall communicate about the merits of the case with the hearings officer designated to hear and decide the matter other than at the time of the prehearing/hearing.

Preponderance of Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. Taken as a whole, the evidence shows that the fact or facts sought to be proved are more likely than not.

Relevance: Evidence that tends to prove or disprove an alleged fact or facts. Such evidence implies a traceable, significant, and logical connection that the relationship cannot be overlooked.

Service: The delivery of a summons or order such as a subpoena, by an authorized person such

as a sheriff. The party wishing to subpoena a witness or witnesses shall prepare the subpoena and present it to the hearings officer for signature. The party shall then have the signed subpoena served by an authorized person, with the cost of service paid for by the requesting party.

Subpoena: A document that commands a person to appear at a hearing to give testimony upon the matter in question. It is usually signed by the hearings officer or other authorized department personnel. The party wishing to subpoena a witness or witnesses must prepare the subpoena and pay for the cost of having it served by the sheriff upon the person or persons they want to appear at the hearing.

Subpoena Duces Tecum: A document that is served upon an individual or authorized representative of an entity who has custody and control of certain specific documents and other items that are considered material and relevant to facts in question and requires the individual or authorized representative to produce those documents or items. The party requesting a subpoena duces tecum must prepare it and pay for the cost of having it served.



Department of Labor and Industrial Relations: <http://hawaii.gov/labor>

This publication has been compiled solely for convenient reference purposes by the Wage Standards Division of the Department of Labor and Industrial Relations.

Available in alternative formats. Contact the Department of Labor and Industrial Relations, Wage Standards Division, at 586-8777 (voice), 586-8847 (TTY/TTD), or 1-888-569-6859 (neighbor island TTY/TTD).

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