

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 1 OFFICE OF THE DIRECTOR

CHAPTER 1

ADMINISTRATIVE PROCEDURES; PUBLIC AND PERSONAL RECORDS

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SUBCHAPTER 1

ADMINISTRATIVE PROCEDURES

Historical Note: Subchapter 1, chapter 1 of title 12 is based substantially upon Regulation XXVI entitled "Relating to Rulemaking Proceedings, Declaratory Rulings, and Public Records and Information," Department of Labor and Industrial Relations. [Eff. 7/9/62; R MAY 11 1981]

§12-1-1 Definitions. When used in this subchapter:

"Administrative rules" means the rules of the department.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Persons" shall be as defined in section 91-1, HRS.

"Rule" shall be as defined in section 91-1, HRS.

"Rulemaking" means the process of adopting, amending, or repealing the administrative rules of the department. [Eff. MAY 11 1981] (Auth: HRS §26-38) (Imp: HRS §91-1)

§12-1-2 The department. (a) The principal office of the department is at 825 Mililani Street, Honolulu, Hawaii 96813. Unless otherwise provided by law, administrative rules, or by direction of the department, all written communications shall be sent to the director at that address.

(b) The offices of the department shall be open to the public from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by law, administrative rules, or executive order.

(c) The director shall be responsible for the custody and maintenance of the official files and records of the department. All orders and other actions of the department shall be authenticated, signed, or otherwise authorized by the director or authorized department personnel.

(d) All documents required to be filed with the department shall be filed in the office of the director or other designated offices of the department within such time limits as are prescribed by law, administrative rules, or orders of the department. [Eff. MAY 11 1981] (Auth: HRS §§26-38, 91-2) (Imp: HRS §§26-38, 91-2)

§12-1-3 Petition for adoption, amendment, or repeal of rules. (a) A petition for rulemaking, as authorized by section 91-6, HRS, shall set forth the text of any proposed rule or amendment or shall specify the rule for which repeal is desired, as well as state any facts, views, and data deemed relevant by the petitioners.

(b) Upon filing, the director may also require the petitioner to provide copies to other persons or agencies who have requested to be notified of any proposed rulemaking in the subject area.

(c) If the director determines that the petition does not disclose sufficient reasons to justify the initiation of proceedings in accordance with section 91-3, HRS, or if the petition fails in material respect to comply with this subchapter, the director shall deny the petition and the petitioner shall be so notified in writing. No public hearing, oral arguments, or other form of proceedings shall be held directly on such petition. [Eff. MAY 11 1981] (Auth: HRS §26-38) (Imp: HRS §91-6)

§12-1-4 Conduct of public hearing on adoption, amendment, or repeal of administrative rules.

(a) The public hearing on rulemaking shall be held at the principal office of the department and presided over by the director or a duly authorized representative. Additional hearings may be conducted elsewhere within the State. Each hearing shall be held at the time and place set forth in the notice of hearing.

(b) At the commencement of the hearing, the presiding officer shall read the notice of the hearing and state the procedures to be followed. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(c) Interested persons and agencies, in such order as the presiding officer may prescribe, shall be given a reasonable opportunity to offer testimony on matters specified in the notice of hearing. Before testifying, individuals shall state their names, addresses, organizations, and such other information respecting their appearance as the presiding officer may request. Every witness shall be subject to questioning by the presiding officer or any other authorized representative of the department. Questioning by other individuals shall not be permitted except when authorized by the presiding officer. Unless ordered by the presiding officer, testimony given at the hearing shall not be reported verbatim.

(d) Persons or agencies wishing to testify but unable to attend the public hearing shall submit their written testimony by the time and date specified in the notice of hearing to any office designated in the notice of hearing for receiving such testimony.

(e) The hearing may be continued by the presiding officer to a later time or date or to a different place without notice other than the announcement thereof at the hearing. [Eff. ^{MAY 1, 1981}]

(Auth: HRS §§26-38, 91-2) (Imp: HRS §91-3)

§12-1-5 Petition for declaratory ruling. (a) On petition of an interested person or agency, the director may issue a declaratory order as to the applicability of any statutory provision, administrative rule, or order of the director. Petitions shall:

- (1) State clearly and concisely the controversy or uncertainty;
- (2) Shall cite the statutory authority involved; and

(3) Shall include a complete statement of the facts and the reasons prompting the petition, together with full disclosure of petitioner's interest.

(b) Upon receipt of the petition, the director may require the petitioner to file additional data or memoranda in support of the position taken by the petitioner.

(c) The director, without notice or hearing, may dismiss a petition for declaratory ruling for want of a substantial question or for material failure to comply with the requirements of this section, and the petitioner will be so notified in writing.

(d) Although no hearing need be granted to the petitioner or to any interested person in the usual course of disposition of a petition for a declaratory ruling, the director may order a hearing upon written request of the petitioner stating in detail why a hearing is necessary for a fair consideration of the petition.

(e) Notwithstanding any other provisions of this section, the director may issue a declaratory order to terminate a controversy or to remove uncertainty.

[Eff. MAY 11 1981] (Auth: HRS §§26-38, 91-8)
(Imp: HRS §91-8)

§12-1-6 Powers respecting oaths, subpoenas, etc.
Officials of the department who may represent the director in the enforcement of the provisions of section 371-6, HRS, are:

(1) The deputy director;

(2) Division administrators and departmental field representatives or officials acting in the capacity thereof. [Eff. MAY 11 1981]

(Auth: HRS §371-1) (Imp: HRS §371-6)

§§12-1-7 to 12-1-49 (Reserved)

SUBCHAPTER 2

PUBLIC AND PERSONAL RECORDS

§12-1-50 Definitions. When used in this subchapter:

"Administrative rules" means the rules of the department.

"Agency" shall be as defined in section 92E-1, HRS.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Individual" shall be as defined in section 92E-1, HRS.

"Personal record" shall be as defined in section 92E-1, HRS.

"Public record" shall be as defined in section 92-50, HRS. [Eff. MAY 11 1981] (Auth: HRS §26-38) (Imp: HRS §§92-50, 92-51, 92E-1)

§12-1-51 Public records. (a) Public records shall be available for inspection in accordance with section 92-51, HRS, and the administrative rules.

(b) Requests to inspect or obtain copies of public records shall be made in writing to the department. The request shall identify or describe the public record and state the purpose for which the request is made.

(c) When denying a request for inspection of public records, the department shall state its reason for refusal and procedures for review of the refusal.

(d) A reasonable fee, determined in accordance with section 91-21, HRS, may be charged for copies furnished. [Eff: MAY 11 1981] (Auth: HRS §26-38) (Imp: HRS §§91-2, 92-51)

§12-1-52 Confidentiality of public records. (a) Confidential information and records, disclosure of which is prohibited except as authorized by law or administrative rules, include those:

- (1) Specified in section 383-95, HRS, and chapter 5, title 12, administrative rules;
- (2) Specified in section 396-14, HRS;
- (3) Collected in the administration of chapters 386, 392, and 393, HRS, such as financial data of an employer or insurance carrier;
- (4) Collected in the administration and enforcement of chapters 104, 378, 387, and 388, HRS;
- (5) Collected in the administration of chapter 372, HRS, such as wage schedules and personal data of apprentices;
- (6) Classified as personal records;
- (7) Designated by the director to insure fair and equitable administration or enforcement of the law.

(b) Any provision of this chapter notwithstanding, the director may authorize disclosure of confidential records or information, when it is deemed to be in the public interest, provided those records are not specifically prohibited from

disclosure by State or Federal law.

[Eff: ^{MAY 11 1991}] (Auth: HRS §26-38) (Imp: HRS §92-51)

§12-1-53 Access of individual to own personal record. (a) An individual's request for access to the individual's personal record may be made either verbally or in writing to the department. Unless exempted by section 92E-3, HRS, other applicable law, or administrative rules, the personal record shall be made available for review during the normal business hours of the department. The individual shall provide adequate identification prior to this review.

(b) The department shall furnish copies of the personal record when requested by the individual. Charges shall be determined in accordance with section 92E-7, HRS.

(c) The agent of an individual, when so designated and authorized in writing by the individual, shall have access to the personal record of the individual as provided for in this section.

(d) When denying the request for access to an individual's personal record, the department shall inform the individual in writing of its refusal, the reason for the refusal, and procedures for review of the refusal. [Eff. ^{MAY 11 1991}] (Auth: HRS §92E-10) (Imp: HRS §§92E-2, 92E-3, 92E-4, 92E-6, 92E-7)

§12-1-54 Correction or amendment of a personal record. To correct or amend a personal record in accordance with section 92E-8, HRS, the individual shall submit a written request to the department that contains the following information:

- (1) Name and address of the individual;
- (2) Title of the personal record;
- (3) Information to be corrected or amended; and
- (4) Supporting evidence or information.

[Eff. ^{MAY 11 1991}] (Auth: HRS §92E-10)
(Imp: HRS §92E-8)

§12-1-55 Review procedures. An individual shall submit a written request to the director for a review of the department's refusal to allow access to, or correction or amendment of a personal record. It may contain any additional pertinent information or evidence. [Eff. ^{MAY 11 1991}] (Auth: HRS §92E-10) (Imp: HRS §92E-9)