

**A GUIDE TO ADMINISTRATIVE HEARINGS  
AT THE  
DLIR WAGE STANDARDS DIVISION**



Hawaii Department of Labor and Industrial Relations  
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 AT THE DLIR WAGE STANDARDS DIVISION**

This guide has been developed to assist you in preparing for an administrative hearing conducted by the Hearings Branch of the Department of Labor and Industrial Relations (DLIR) Wage Standards Division.

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.

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.
  
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 usually proceeds through a two-step hearing 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. You should be open and willing to consider suggestions on resolving the dispute. If the parties are unable to achieve a satisfactory resolution of the dispute, a date for the formal hearing will be set. In preparation for the formal hearing, the hearings officer will set a deadline for the exchange of exhibits, list of witnesses, and affidavits, if any, that are expected to be used at the hearing. One copy of your documents (exhibits, list of witnesses, and affidavits, if any) along with a certificate of service must be filed with the hearings officer by the same deadline.
4. The need for subpoenas may be discussed with the hearings officer.

## **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 include 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 with the Director of Labor and Industrial Relations exceptions to the decision and request a review. 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 from receipt 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 from receipt of the decision as provided in Section 91-14, HRS.

***Good luck!***



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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