

839-050-0445

Hearings on Prevailing Wage Rate Determinations

(1) This rule sets forth the procedures used in contested case hearings requested pursuant to ORS 279C.817(4) and OAR 839-025-0005(7).

(2) Hearings on prevailing wage rate determinations are governed by the procedures set forth in OAR 839-050-0000 to 839-050-0430, except to the extent those procedures are modified by this rule.

(3) The following definitions apply to this rule:

(a) “Aggrieved person” means a person adversely affected or aggrieved by a commissioner’s determination under ORS 279C.817.

(b) “Determination” means a determination issued by the commissioner under the provisions of ORS 279C.817 and OAR 839-025-0005.

(c) “Party” means a requester or aggrieved person who has requested a hearing after the commissioner issues a determination.

(d) “Requester” means a public agency or other interested person who requests a determination under ORS 279C.817 about whether a project or proposed project is or would be a public works on which payment of the prevailing rate of wage is or would be required under ORS 279C.840.

(4) When the commissioner has issued a determination and the requester or aggrieved person requests a hearing, an administrative law judge will be assigned to hear the case and the Hearings Unit will issue a Notice of Hearing to the party that meets the requirements of OAR 839-050-0080(3) and 839-050-0100.

(5) Within ten days after the Notice of Hearing is issued, the administrative law judge will issue an order requiring:

(a) The party to file a written statement identifying all of the party’s reasons for contesting the determination; and

(b) The agency to file copies of all materials provided by the requester under OAR 839-025-0005(1)-(4), a copy of the agency’s determination, and a copy of any other materials the agency relied on to reach its determination. The agency will mark these materials and the agency’s determination for identification in the manner set forth in OAR 839-050-0270.

(6) The statement, materials, and agency determination filed pursuant to section (5) of this rule will be received into the record as exhibits.

(7) Within twenty days prior to hearing, the party and the agency each will file written statements containing the names of all persons they propose to call as witnesses at the hearing, along with a statement of how each person’s testimony will help the administrative law judge understand the materials provided by the requester under OAR 839-025-0005(1)-(4) or the reasons for the agency’s determination.

(8) After reviewing the materials and statements filed pursuant to sections (5) and (7) of this rule, the administrative law judge may issue an interim order finding that the testimony of any proposed witness is irrelevant to the issues at hearing and disallowing the proposed testimony. The administrative law judge may also request that the party or agency bring additional witnesses to the hearing.

(9) Evidence presented at hearing is limited to the exhibits and witness testimony explaining the exhibits and their legal significance.

(10) At hearing, the party will have an opportunity to explain the reasons that the party contests the determination and the agency will have an opportunity to explain the reasons for its determination.

(11) If the party withdraws its request for hearing or does not appear at the scheduled hearing, the administrative law judge will issue an order canceling the hearing. When a hearing is

cancelled based on a party's failure to appear at the scheduled hearing, the hearing may be rescheduled if the party establishes good cause for its failure to appear within 10 days after the party fails to appear at hearing. The party's request to reschedule the hearing must be in writing and be accompanied by a written statement, together with appropriate documentation, setting forth facts supporting the claim of good cause.

Stat. Auth.: ORS 183, 651.060(4), 279C.817

Stat. Implemented: ORS 279C.817