

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

BUREAU OF SAFETY AND REGULATION

HEARINGS OFFICE

WAGE AND FRINGE BENEFIT HEARINGS

(By authority conferred on the department of consumer and industry services by section 12 of Act No. 390 of the Public Acts of 1978, as amended, being S408.482 of the Michigan Compiled Laws)

R 408.22951 Scope.

Rule 1. (1) These rules govern proceedings before a hearings officer appointed by the director to conduct hearings pursuant to the act.

(2) Proceedings conducted pursuant to the act are also governed by chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being S24.271 et seq. of the Michigan Compiled Laws.

History: 1982 AACCS.

R 408.22952 Definitions.

Rule 2. As used in these rules.

(a) "Act" means Act No. 390 of the Public Acts of 1978, as amended, being S408.471 et seq. of the Michigan Compiled Laws.

(b) "Appeal" means request for review.

(c) "Appellant" means a party who files an appeal.

(d) "Department" means the Michigan department of consumer and industry services.

(e) "Determination order" means the written determination of the merits of a complaint, including violation citations, penalty assessments, and exemplary damage assessments, if any, issued by the department to an employee or employer pursuant to a complaint.

(f) "Director" means the director of the department.

(g) "Hearings officer" means the person designated to conduct hearings and issue decisions on behalf of the department pursuant to the act and chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being S24.271 et seq. of the Michigan Compiled Laws.

(h) "Hearings office" means the office within the department so designated by the department and assigned the responsibility of conducting fair and impartial hearings on administrative matters.

(i) "Motion" means an application for a ruling or order to the hearings officer which is made orally on the record or in writing at any stage of the proceeding.

(j) "Party" means a person admitted to participate in the hearing conducted pursuant to these rules. The employee, employer, and the department shall be parties to a proceeding before a hearings officer brought pursuant to the act.

(k) "Person" means an individual, partnership, association, corporation, business trust, legal representative, organized group of individuals, or an agency authority, or instrumentality of the state or a political subdivision thereof.

(l) "Representative" means a person authorized by a party to represent that party in a proceeding.

(m) "Wage hour administration" means the wage hour administration of the bureau of employment standards of the department which is delegated the responsibility of investigating claims, issuing determination orders, and representing the department in hearings held pursuant to the act.

History: 1982 AACCS.

R 408.22953 Computation of time periods.

Rule 3. In computing a period of time within which an act shall be performed or an appeal filed, the calendar day from which the act shall be performed or an appeal filed shall be excluded. The calendar day on which a compliance therewith is required shall be included. If the last day within which an act shall be performed or an appeal filed is a Saturday, Sunday, or a state legal holiday, that day shall be excluded and the period shall run until the end of the next day which is neither a Saturday, Sunday, nor state legal holiday. "State legal holiday" means those days designated in Act No. 124 of the Public Acts of 1865, as amended, being S435.101 et seq. of the Michigan Compiled Laws.

History: 1982 AACS.

R 408.22954 Extension of time; request; waiver.

Rule 4. A request for an extension of time for the filing of any document, brief, or motion shall be filed with the hearings office in advance of the day on which the document, brief, or motion is due to be filed. This requirement may be waived by the hearings officer for good cause shown.

History: 1982 AACS.

R 408.22955 Continuances.

Rule 5. The hearings officer, in the exercise of discretion, may grant a continuance of hearing upon a showing of good cause by the requesting party.

History: 1982 AACS.

R 408.22956 Representation of parties.

Rule 6. (1) Any party may be represented by an attorney or other representative or may appear in person. A representative need not be an attorney.

(2) A representative of a party shall be deemed to control all matters respecting the interests of that party in the proceedings.

History: 1982 AACS.

R 408.22957 Settlement agreements.

Rule 7. (1) Settlement agreements are encouraged at any stage of the proceedings.

(2) A settlement agreement shall be submitted by the parties in writing or orally on the record and it shall be followed by an order from the hearings officer acknowledging the settlement and closing the case.

History: 1982 AACS.

R 408.22958 Form of filed papers.

Rule 8. (1) A particular form is not prescribed for an appeal, motion, and other paper which may be filed in proceedings under these rules.

(2) Any appeal, motion, or other paper that may be filed in proceedings under these rules shall be legible, shall contain a plain statement of relief sought and shall be signed by the party involved or his or her representative.

History: 1982 AACS.

R 408.22959 Filing of papers and documents.

Rule 9. (1) A paper that may be filed in proceedings under these rules, with the exception of the appeal of the determination order, shall be filed with the hearings office.

(2) At the time of filing pleadings, a motion, an application, or other document, a copy thereof shall be served by the filing party on every other party or representative. Service shall be made upon the party or representative by delivering a copy or by mailing it to the last known address.

(3) Unless otherwise ordered, a filing may be accomplished by first class mail.

(4) The filing of a paper, with the exception of an appeal, is deemed effective at the time of mailing. The mailing date shall be presumed to be the postmark date appearing on the envelope if postage was prepaid and the envelope was properly addressed.

(5) An appeal from a determination order shall be filed with the wage hour administration and shall be received within 14 days from the date of mailing of the determination.

History: 1982 AACs.

R 408.22960 Late appeal; showing of good cause; hearing; determination order final.

Rule 10. (1) Any appeal received by the department more than 14 days after the determination order is issued shall be immediately transmitted with the employee wage claim and the determination order to the hearings office.

(2) Upon receipt of a late appeal under this rule, the hearings officer shall issue an order which directs the appealing party to show good cause why the late appeal should not be dismissed and the determination order made final. If the hearings officer finds good cause for the late appeal, the case shall proceed to hearing. Absent such a finding, the determination order shall be held final.

History: 1982 AACs.

R 408.22961 Withdrawal of appeal or complaint; order.

Rule 11. An appellant may withdraw an appeal and an employee may withdraw a complaint for benefits at any stage of the proceedings. Upon transmittal of such a withdrawal, the hearings officer shall issue an order and close the case.

History: 1982 AACs.

R 408.22962 Subpoenas.

Rule 12. (1) A subpoena shall be issued on the hearings officer's own motion or upon a written request requiring the attendance of witnesses or the production of documentary or physical evidence.

(2) A subpoena may be served by any person authorized by law to serve process. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service and shall be filed with the hearings office.

History: 1982 AACs.

R 408.22963 Motions.

Rule 13. A party may file a motion. A motion shall be in writing, unless made on the record during the proceedings, and shall fully state the action requested and the grounds relied upon. All other parties shall be given an opportunity to object to a motion.

History: 1982 AACs.

R 408.22964 Notice of prehearing conference or hearing.

Rule 14. Notice of prehearing conference or hearing shall be given to the parties in writing not less than 14 days in advance of the scheduled date, except under exceptional circumstances or by agreement of the parties.

History: 1982 AACS.

R 408.22965 Prehearing conference.

Rule 15. (1) Where appropriate, the hearings officer may schedule a prehearing conference.

(2) The parties or representatives shall state on the record the stipulations, agreements, and other matters agreed to by the parties or representatives at the prehearing conference.

History: 1982 AACS.

R 408.22966 Failure of appellant to appear in contested case.

Rule 16. If the appellant fails to appear in a contested case after proper notice, an order shall be entered dismissing the appeal.

History: 1982 AACS.

R 408.22967 Conduct of hearing.

Rule 17. A hearing shall be conducted by an impartial hearings officer.

The hearing shall be recorded verbatim and need not be conducted according to technical rules of evidence.

History: 1982 AACS.

R 408.22968 Evidence.

Rule 18. All testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; introduce exhibits; cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; and impeach any witness, regardless of which party first called the witness to testify.

History: 1982 AACS.

R 408.22969 Burden of proof.

Rule 19. An appellant shall have the burden of proving those matters upon which the appeal is based.

History: 1982 AACS.

R 408.22970 Duties of hearings officer.

Rule 20. The hearings officer shall conduct a fair and impartial hearing, assure that the facts are fully elicited, adjudicate all issues, and avoid delay.

History: 1982 AACS.

R 408.22971 Decision or order.

Rule 21. A hearing officer's written decision or order shall be issued within 30 days subsequent to the closing of the record of the proceedings.

History: 1982 AACS.