

SUMMARY OF CONTESTED CASE RIGHTS AND PROCEDURES

(WAGE AND HOUR DIVISION)

THIS SUMMARY IS INTENDED ONLY AS AN INTRODUCTION TO THE CONTESTED CASE HEARING PROCESS. **YOU NEED TO READ THE ENCLOSED HEARINGS RULES IN THEIR ENTIRETY TO BE AWARE OF YOUR RIGHTS AND THE PROCEDURES AT THE HEARING.**

1. DEFINITION OF CONTESTED CASE, PARTICIPANTS, AND APPLICABLE LAW

The matter set for hearing in the attached Notice of Hearing is a contested case. The issues to be considered at hearing are set forth in the charging document for Case No. _____, which is attached hereto, and those issues related to the notice that are properly before the Administrative Law Judge ("ALJ") in this proceeding. The hearing will be conducted before an ALJ under the laws and rules set out in Oregon Revised Statutes ("ORS") Chapter 183 and the Oregon Administrative Rules ("OAR") adopted by the Bureau of Labor and Industries for contested case hearings, beginning with *OAR 839-050-0000*.

This hearing has been set in response to a charging document that may include an Order of Determination or Notice of Intent to Assess Civil Penalties and/or to Deny, Suspend, or Revoke a License issued by the Bureau's Wage and Hour Division (the "agency") alleging a violation of the law. An individual or entity accused in the charging document of violating the law is called a Respondent.

2. RESPONDENT'S RIGHT TO AN ATTORNEY/REPRESENTATION AT THE HEARING

All Respondents may be represented by counsel. Legal aid organizations may be able to assist a party with limited financial resources.

Individual Respondents may choose whether or not to be represented by an attorney.

All government agencies, partnerships, corporations, and unincorporated associations **MUST** be represented either by an attorney or by an "authorized representative" at all stages of the hearing, including the filing of an answer. *OAR 839-050-0110* sets forth this requirement, and also defines who may appear as an authorized representative.

Before a person may appear as an authorized representative of a government agency, partnership, corporation, or unincorporated association that is a party to a contested case proceeding, the person must file a letter authorizing the person to appear on behalf of the party.

Any attorney appearing on your behalf must be a member in good standing with the Oregon State Bar, or a member in good standing of the bar of another state

of the United States court who is permitted to appear in this proceeding by order of the ALJ. *OAR 839-050-0020(8)*. Once the hearing begins, you will not be allowed a recess to obtain an attorney.

The Agency is usually represented by an employee of the Agency with the title of Case Presenter, but in some cases may be represented by the Attorney General. The Agency's representative is named in the attached Notice of Hearing.

3. WITHDRAWAL OF REQUEST FOR HEARING & DEFAULT

If you withdraw your request for hearing, you will be held in "default." The Agency's file will be designated as the record of the case and no hearing will be held. *OAR 839-050-0070*. A Final Order by Default will be issued by the Administrator of the Wage and Hour Division. *OAR 839-050-0430*.

4. FAILURE TO APPEAR AT HEARING & DEFAULT

Prior to the hearing, if you notify the Agency or ALJ that you will not appear at the time and place specified for hearing, or without notice, fail to appear at the hearing, you will be held in "default." The ALJ will wait no longer than 30 minutes to begin the hearing. If you are more than 30 minutes late, you will be held in default, but can request relief from default at the hearing. If you are held in default, you may attend, but will not be allowed to participate in the hearing. *OAR 839-050-0330*. The Agency's file may become part of the contested case record for the purpose of proving a prima facie case. *OAR 839-050-0430*.

5. ADMINISTRATIVE LAW JUDGE

The ALJ who presides at the hearing is an employee of the Agency. The ALJ will rule on all motions, control the course of the hearing, and may also question witnesses. *OAR 839-050-0240*.

6. CORRESPONDENCE, FILINGS, AND MOTIONS

a) The Agency Case Presenter and the ALJ will send all correspondence to you at the address to which this document was sent unless you notify them of a change of address. You **MUST** notify the Agency Case Presenter and ALJ of your change of address within 10 days of the change or any correspondence sent to the address to

which this document is sent will be considered received. *OAR 839-050-0030*.

b) All correspondence, filings, and motions **MUST** be sent to the ALJ at the following address:

**Bureau of Labor and Industries
Hearings Unit
1045 State Office Building
800 NE Oregon Street
Portland, OR 97232-2180**

Copies must also be sent to the Agency Case Presenter at the address noted on the Notice of Hearing.

c) Most filings have time deadlines. These deadlines are explained in the contested case hearings rules, beginning with *OAR 839-050-0000*. The ALJ has discretionary authority to disregard late filings. *OAR 839-050-0050*.

7. CHANGE OF HEARING LOCATION

You may make a written request for the hearing to be held in a different location. You should make this request as soon as possible after receiving the Notice of Hearing. *OAR 839-050-0150(2)*.

8. POSTPONEMENTS

The ALJ can grant a postponement. You **MUST** make a written request showing that the need for a postponement is due to an excusable mistake or circumstances beyond your control. Once you determine a postponement is necessary, you should request it as soon as possible. *OAR 839-050-0150(5)*.

9. INTERPRETER OR ASSISTIVE COMMUNICATION DEVICE

If you or one of your witnesses needs an interpreter or assistive communication device, the ALJ will appoint a qualified interpreter and make available an assistive communication device. No fee will be charged to a party or witness with a physical hearing or speaking impairment. No fee will be charged to interpret the testimony of a party or witness unable to speak or understand the English language. No fee will be charged to interpret the proceedings to a party who is unable to speak or understand the English language *if the party is unable to pay* for an interpreter. The ALJ **MUST** receive your request at least 20 days before the date the interpreter or assistive communication device will be needed. *OAR 839-050-0300(1)*.

10. DISCOVERY

Prior to the hearing, the participants may ask each other to provide documents or other physical evidence related to issues in the case. If the documents or other physical evidence are not provided, a participant may make a written request to the ALJ for a discovery order requiring the production of the evidence. If any participant has an objection to any part of the request, that participant may make a written objection to the ALJ. The ALJ will determine whether that evidence must be provided. *OAR 839-050-0200.*

11. EVIDENCE & WITNESSES (generally)

Respondents have the right to respond to all issues properly before the presiding officer (the ALJ) and to present evidence and witnesses on those issues.

12. CASE SUMMARIES

Prior to the hearing, the ALJ will issue a Case Summary Order requiring both participants to file written case summaries disclosing the names of the witnesses each participant intends to call at hearing and to provide four copies of exhibits each participant intends to offer at hearing. *OAR 839-050-0210.* Documents should be no larger than 8½ inches by 11 inches in size. *OAR 839-050-0270.* Copy facilities are not usually available at the hearing. The ALJ may refuse to admit evidence that has not been disclosed in response to a Case Summary Order.

13. WITNESSES

Your attorney may subpoena witnesses for the hearing. If you do not have any attorney, the ALJ will, if appropriate, issue subpoenas upon your written request. Your written request **MUST** explain how the witness's testimony relates to the issues in the case. It should be filed with the Hearings Unit as soon as possible and no later than 7 days before the scheduled hearing date. Service of subpoenas and payment of witness and mileage fees are your responsibilities. *OAR 839-050-0200(10).* Witness and mileage fees must be given to the witness at the time the subpoena is served.

All witnesses **MUST** testify under oath or affirmation to tell the truth. *OAR 839-00-0290.* Witnesses may testify in person or by telephone. *OAR 839-050-0250(11).* You, your attorney, or your authorized representative may examine your witnesses and cross-examine the Agency's witnesses, and vice versa. *OAR 839-050-0250(5)(6).*

14. HEARING PROCEDURE

a) The Agency and Respondent may make opening statements.

b) The Agency will present evidence in support of its case.

c) The Respondent will have an opportunity to present evidence in support of its case and to rebut the Agency's evidence.

d) The Agency may present evidence to rebut evidence presented by the Respondent.

e) The Agency and Respondent may make closing arguments.

f) After the Proposed Order is issued, either the Agency or Respondent may file written Exceptions. *OAR 839-050-0250.*

15. BURDENS OF PROOF & PRESENTING EVIDENCE

The burden of presenting evidence to support a fact or a position is on the participant who offers that fact or position. The burden of proof for any fact or position is by a preponderance of the evidence. A "preponderance" means by the greater weight of credible evidence. *OAR 839-050-0260.*

16. ADMISSIBLE EVIDENCE

All evidence "of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs" will be admissible. However, evidence that is irrelevant, immaterial, or unduly repetitious may be excluded in the ALJ's discretion or upon an objection by the other participant. Hearsay evidence is not automatically excluded. *OAR 839-050-0260.*

Specific types of admissible evidence include: (1) Witness testimony, including your own testimony and testimony of other persons; (2) Documents, including business records, letters, records, maps, diagrams, and other written material; (3) Other physical evidence, including experiments and demonstrations that can be used to prove a fact; (4) Official notice taken by the ALJ of conclusions developed as a result of experience in a specialized field. This may include general, technical or scientific facts.

To be considered, all evidence **MUST** be presented at the hearing unless: (1) the ALJ concludes that additional evidence is necessary to a full and fair resolution of the case; or (2) a participant moves to reopen the record to present additional relevant evidence and shows good cause for not providing it before the record closed.

Based on the Oregon Consumer Protection Identity Theft Protection Act, you should redact (remove) any Social Security numbers on your exhibits unless they are relevant to the case.

17. HEARINGS RECORD

The hearing will be recorded to perpetuate the testimony and evidence.

In the event of an appeal, the recording will be transcribed. A digital copy of the recording may be purchased from the Hearings Unit after the Proposed Order has been issued. *OAR 839-050-0350.*

18. PROPOSED ORDERS

After the hearing, the ALJ will prepare and issue a written proposed order that includes proposed findings of fact, conclusions of law, an opinion, and a proposed order. Participants objecting to any part of the proposed order **MUST** file written "Exceptions" within 10 days after the proposed order is issued. *OAR 839-050-0370.*

19. FINAL ORDERS

The Commissioner of the Bureau will review the proposed order and any Exceptions and make a final determination of the case by issuing a final order. The Commissioner may adopt all or any part of the proposed order or may change any of its provisions. *OAR 839-050-0420.*

20. APPEAL

If you wish to appeal the final order, you **MUST** file a petition for judicial review with the Oregon Court of Appeals in Salem, OR, within 60 days after the final order is issued. When a final order imposes civil penalties for child labor violations, the petition for judicial review must be filed within 30 days after the final order is issued. The court will use the record of the hearing in considering your appeal. *ORS 183.480 to ORS 183.497; ORS 653.370(2).*

21. RELIEF FROM DEFAULT

You may request relief from default, based on good cause, by making a written request. If a Final Order by Default has been issued by the administrator of the Wage and Hour Division based on your withdrawal of your request for hearing, your request for relief from default **MUST** be filed with the administrator within 10 days of the issuance of the Final Order by Default. If you are held in default based on your failure to appear at the hearing, your request for relief from default **MUST** be filed with the Hearings Unit within 10 days of the date of the hearing. In both instances, your request must be based on good cause and accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting your claim of good cause. Your request **MUST** be addressed to the ALJ assigned to hear the case. *OAR 839-050-0340.*

22. SETTLEMENT

To avoid a hearing you may offer to settle the case prior to hearing. You should contact the Agency Case Presenter to discuss settlement options. *OAR 839-050-0220.*