

Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT



HEARING PROCEDURE

The following is important information regarding Labor Code §98(a) hearings. You are urged to read and understand this material.

NOTICE TO DEFENDANT

Within 10 days after service upon you of the Notice of Hearing, you may file an answer with the Labor Commissioner at the office listed on the notice. The hearing scheduled in this matter will be conducted regardless of whether you submit an answer.

You may, but need not, be represented by an attorney. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written answer, if any, may be filed on time. You have the right to have a representative present at the hearing. It is not necessary that such representative be an attorney.

You will be given an opportunity at the hearing to testify in your behalf, to present any relevant evidence, present witnesses, and cross examine the opposing party and witnesses testifying against you. The hearing in this matter will be held regardless of whether you appear. An Order, Decision or Award will be issued in accordance with the evidence presented at the hearing.

Any wages or expense reimbursements awarded pursuant to this hearing will accrue interest from the day they were due until they are paid, in accordance with Labor Code §98.1(c) and §2802.

THIS MATTER CAN BE DISPOSED OF WITHOUT A HEARING BY YOUR REMITTING IN FULL THE AMOUNT SPECIFIED IN THE COMPLAINT, INCLUDING THE ADDITIONAL WAGES PURSUANT TO LABOR CODE §203 (IF STATED IN THE COMPLAINT), IN WHICH EVENT YOU NEED NOT FILE OR SUBMIT AN ANSWER.

NOTICE TO PLAINTIFF

Failure to attend the scheduled hearing will result in the dismissal of your complaint.

You may, but need not, be represented by an attorney. If you wish to seek the advice of an attorney in this matter, you should do so promptly. You have the right to bring a representative with you to the hearing. It is not necessary that such representative be an attorney.

You will be given an opportunity at the hearing to testify in your behalf, to present any relevant evidence, present witnesses, and cross examine the opposing party and witnesses testifying against you.

If you have any reason to believe that the person or corporation named as a defendant in the Notice of Hearing is not correct, you must write to the deputy assigned to your case as soon as possible.

GETTING RECORDS AND/OR WITNESSES FOR THE HEARING

You should bring all documents to the hearing that supports your position. An employer who intends to introduce business records into evidence should also bring a person to the hearing who can explain how such records were prepared. If available, the originals of all documents should be brought to the hearing. (California Evidence Code)

If you wish to have witnesses testify, you may arrange for the witnesses to attend voluntarily or you may request issuance of a personal subpoena to compel their attendance.

The Labor Commissioner, at the request of a party, may issue subpoenas for documents, records or witnesses. Applications to the Labor Commissioner for issuance of subpoenas should be made at least 15 business days prior to the date of the hearing. Submit a written request, using Form DLSE 564 "Information for Subpoena," stating the reasons you feel the documents, records, or witnesses are relevant and necessary. In the exercise of his or her sound discretion, the Deputy Labor Commissioner may limit the number of witnesses subpoenaed either for the purpose of corroboration or establishing a single material fact in issue, or where the party requesting the subpoena has not furnished satisfactory evidence that the witness will be able to give necessary and competent testimony, materials to the issues, at the hearing. (8CCR §13506) The party requesting the subpoena(s) is responsible for all costs incurred in the service of the subpoena(s), witness fees, and mileage. Witness fees currently are \$35.00 per witness and \$0.20 per mile.

TO CHANGE THE DATE, TIME, OR PLACE OF THE HEARING

Changes in the date, time, or place of the hearing ordinarily will not be granted. The Hearing Officer may, in the exercise of sound discretion, grant a continuance upon a showing of extraordinary circumstances. Any request for rescheduling must be submitted in writing to the Hearing Officer.

INTERPRETER

If an interpreter will be needed, you must advise the Labor Commissioner immediately.

ABOUT THE HEARING OFFICER

The Hearing Officer is a Deputy Labor Commissioner who has had extensive experience in the field of labor law. The Hearing Officer's determination is not subject to review at the administrative level.

CONDUCT OF THE HEARING

The Hearing Officer has the sole authority for the conduct of the hearing. In conducting the hearing, the Hearing Officer will:

1. Explain the issues and meaning of terms the parties do not understand.
2. Explain the order in which persons will testify, ask questions and rebuttal.
3. Assist parties and witnesses to obtain necessary facts.
4. Determine on his or her own motion or the request of a party whether testimony and documents being offered should be received and considered or require a foundation for the introduction of evidence.
5. Question parties and witnesses to obtain the necessary facts.

It is important to note that the rules of evidence do not apply and the Hearing Officer has wide discretion in accepting evidence. However, no determination can be based upon evidence that would not be admissible in court.

THE DECISION

The Order, Decision or Award of the Labor Commissioner will be served upon you after the hearing. The decision will set forth the facts and the reasons for the decision.

GOVERNING REGULATIONS

A copy of the administrative regulations governing formal hearings under Labor Code §98(a) is available at any office of the Labor Commissioner.