

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
PO BOX 2076
CONCORD, NH 03302-2076

**A Guide to the Wage Adjustment and Civil Penalty Hearing
Processes**

FORWARD AND DISCLAIMER:

This guide is a “plain language” explanation of what employers can expect when they are involved in a wage adjustment hearing and/or civil penalty hearing before the NH Department of Labor. This guide answers the most commonly asked questions, and is not meant to be a comprehensive review of all statutes and rules governing the hearing process. If a specific question or concern is not addressed in this guide, parties are encouraged to contact the Department with specific questions, by telephone at (603) 271-1492/271-6294, by e-mail at Inspection.Division@dol.nh.gov , or by mail at PO Box 2076, Concord, NH 03302.

WHAT HAPPENS AT A HEARING?

The Department mails the employer, and any attorney(s) noted, a “Notice of Hearing” that tells when, where, and why a hearing is taking place. Hearings usually start on time, and will go forward without all of the parties if they are not here within 15 minutes of the scheduled start time, unless the Department has received a call. Hearings cannot be canceled within 7 days of the hearing, except in rare instances when the Department believes that an emergency or a “compelling need” exists. If it is necessary for a party to request that a hearing be rescheduled, the request must be in writing to the Department.

The hearing takes place in a conference room before a Hearing Officer, who is an employee of the Department. The hearing is recorded, and all parties are placed under oath or affirmation before testifying. The Department presents its case first, including the presentation of evidence and any witnesses. The employer/business can then ask the Department representatives and witnesses any questions, and then the employer/business presents their case. The Department can then ask the employer/business representative questions, and both parties are given a chance to add anything or summarize their case before the hearing is closed.

CAN A PARTY TESTIFY BY TELEPHONE?

The rules of the Department allow parties to testify by telephone only if all parties and the Department agree to it. Please let the Department know as far in advance as possible if there is a need to testify by telephone. If all parties do not agree to a telephonic hearing, the Department may allow telephonic testimony based upon economic hardship, illness, geographical restrictions, incarceration, safety concerns, or a finding that it would be manifestly inequitable to deny telephonic testimony. Telephonic testimony is not allowed where the assessment of credibility is an issue.

WHAT HAPPENS IF A PARTY DOES NOT SHOW UP?

If a party does not appear at the hearing, the hearing usually proceeds as scheduled. A decision is rendered on the testimony and evidence presented at the hearing and evidence submitted in writing prior to the start of the hearing.

SHOULD A PARTY BRING A LAWYER TO THE HEARING?

The Department can not answer this question. This is an individual decision. The Department makes every effort to conduct hearings in a straight forward manner, and attempts to make certain that everybody gets a fair hearing whether or not they are represented by legal counsel. If an attorney is hired, they are responsible to file an “Appearance” with the Department when they are retained.

CAN ADDITIONAL ISSUES BE BROUGHT UP AT THE HEARING?

Generally, only the issues on the Hearing Notice will be discussed at the Hearing. Any party can add or expand issues up to 14 days before the hearing. Issues not noticed on the Hearing Notice can only be discussed at the hearing if all parties agree to add the issues.

DOES ONE PARTY HAVE TO LET THE OTHER PARTY KNOW WHAT THEY PLAN TO SAY AT THE HEARING?

Yes. All parties are required to let the other party know two business days prior to the hearing the nature of all evidence and submissions they plan to present.

WHAT AND WHO SHOULD BE BROUGHT TO THE HEARING?

Again, the Department can not answer this question. All documentation should be submitted to this Department at least two business days prior to the date of the hearing. Parties can bring witnesses to testify to the facts of the case. Witnesses should not be brought to say that someone is an honest person or a good employer as these references are not usually relevant to the decision.

CAN LETTERS BE SUBMITTED FROM PEOPLE WHO ARE NOT ABLE TO ATTEND THE HEARING?

Yes, letters can be presented. It is preferable to get any letters notarized. Letters are not given as much weight as a live witness in deciding the case because the Department is not able to ask the questions. Again, documentation should be submitted at least two business days prior to the date of the hearing.

HOW DOES THE HEARING OFFICER DECIDE A CASE?

The hearing officer considers the testimony and evidence presented by all parties present at a hearing, as well as the credibility of the witnesses, make their decision. They will determine the facts that have been proven as true and whether any New Hampshire Labor Law statutes have been violated.

WHO HAS THE “BURDEN OF PROOF”?

The Department has the burden to prove the violations contained in the Inspector’s Report occurred, meaning that it is more probable than not that the violations occurred.

WHAT IS NOT ALLOWED AT HEARINGS?

Drugs, alcohol, weapons of any kind (including by persons licensed or authorized to carry weapons), violence disrespect, threatening, or any action out of the regular order of a hearing will not be tolerated.

WHEN DO I GET A DECISION?

A written decision is usually mailed within 30 days of the date that the record is closed by the Department, which may be after the date of the actual hearing, if the record is left open by the hearing officer for the submittal of additional evidence.

WHAT IF A MISTAKE IS IN THE DECISION, OR IF IT IS NOT CLEAR?

The rules of the Department let a party ask for a reconsideration of a decision within 10 days of the date of the decision, only in instances where there is “clearly a mistake” such as a math error, or for clarification if the decision is unclear. A party should not ask for reconsideration just because they disagree with the decision.

HOW CAN A DECISION BE APPEALED?

The decision will specify any appeal rights.

[Directions to the New Hampshire Department of Labor](#)

Located at:

Governor Hugh Gallen State Office Park

Spaulding Building

95 Pleasant Street

Concord, NH 03301

Phone: (603) 271-3176

[Coming from the South or West of Concord via 93 North and / or 89 South](#)

- Exit Interstate 93 North at exit 14
- At the lights turn left onto Loudon Road
- Once on Loudon Rd you'll pass through 3 quick sets of lights. After the 3rd set of lights, Loudon Rd turns into 2 lanes (you want to be in the left lane). The 4th set of lights is the Main Street intersection (The Holiday Inn will be directly to your right)
- Turn left onto Main Street (use right hand lane) and follow (.3 miles) until you come to the 1st set of lights (Pleasant Street intersection)
- Turn right onto Pleasant Street. Approximately 1 .2 miles on Pleasant Street turn left into the Governor Hugh Gallen Office Park where you will immediately come to an intersection.
- At the intersection, the Thayer building is directly in front of you. The Spaulding building, which houses the Department of Labor, is located directly behind the Thayer building. Turn right at the intersection and follow the road around back to the Spaulding Building/Department of Labor.

[Coming from the North or East of Concord via 93 South and / or 393](#)

- Exit Interstate 93 South at exit 14
- At the lights turn right onto Loudon Rd

- Once on Loudon Rd you'll pass through 1 set of lights. After the set of lights, Loudon Rd turns into 2 lanes (you want to be in the left lane). The next set of lights is the Main Street intersection (The Holiday Inn will be directly to your right)
- Turn left onto Main Street. Using the right hand lane follow (.3 miles) until you come to the 1st set of lights (Pleasant Street intersection)
- Turn right onto Pleasant Street. Approximately 1.2 miles on Pleasant Street turn left into the Governor Hugh Gallen Office Park where you will immediately come to an intersection.
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