

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
PO BOX 2076
CONCORD, NH 03302-2076
A GUIDE TO THE WHISTLEBLOWER'S COMPLAINT PROCESS**

FORWARD AND DISCLAIMER:

This guide is a "plain language" explanation of what complainants and employers can expect when they are involved in a Whistleblowers' Protection Act hearing before the 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 hearings process. If a specific question or concern is not addressed in this guide, parties are encouraged to contact the Department by telephone at (603) 271-1492/ 271-6294, or by mail at PO Box 2076, Concord, NH 03302-2076 or e-mail at InspectionDiv@dol.nh.gov.

WHISTLEBLOWERS COMPLAINT PROCESS

- After a Whistleblowers' complaint form has been accepted by this Department, a notice of the Whistleblowers' complaint form is mailed to the employer with the complaint. The employer has 10 days from receipt to respond to the complaint:
 - a) If the employer sends an objection to the complaint it is forwarded to the complainant.
 - b) The complainant is asked to respond to the objection within 10 days from receipt. If the complainant agrees with the objection they can close the complaint or if they disagree with the objection they can request a hearing. A pre-hearing conference will be scheduled to clarify the process prior to scheduling a hearing on the issues.
 - c) If the complainant does not respond, the complaint is closed.
 - d) If the employer does not respond to the complaint, a hearing date is scheduled and a hearing notice is mailed to both parties.
- If a hearing is scheduled, both parties should submit any documentation they would like to present at the hearing to this Department and to the opposing party at least 2 business days prior to the hearing.

WHAT HAPPENS AT A PRE-HEARING CONFERENCE?

A pre-hearing conference provides an opportunity for both parties to clarify any issues regarding the filing of the claim or any issues to be added to the claim, as well as ask any procedural questions. Hearing dates may also be selected. The merits of the case ARE NOT discussed at the pre-hearing conference.

WHAT HAPPENS AT A HEARING?

After any party requests a hearing, the Department sends the complainant, the employer, and the attorney(s) noted, a "Notice of Hearing" that tells when, where, and why a hearing will take place. Hearings customarily begin at the scheduled time. The start of the hearing will be delayed by fifteen minutes, pursuant to the administrative rule, if all parties are not present. Hearings will usually go forward without the presence of all the parties if they are not here on time unless the Department has received a call. If a party is going to be late, they should call or the hearing may take place without them. Hearings cannot be cancelled 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 party must request this in writing to the Department as well as the other party. 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 complainant presents his/her case first, including the presentation of evidence and any witnesses. The employer can then ask the complainant and witnesses any questions, and then presents the employer's case. The complainant can ask the employer questions, and both parties are given a chance to add

anything or summarize their case before the hearing is over. The party with the burden of proof (usually the complainant) shall give his/her closing statement last.

CAN A PARTY TESTIFY BY TELEPHONE?

The rules of the Department allow parties to testify by telephone only if the other party and the Department agree. Please advise the Department 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 THE OTHER PARTY DOESN'T SHOW UP?

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

SHOULD A PARTY TO A HEARING BRING A LAWYER?

The Department cannot answer this question. In some of the Whistleblowers' Protection Act hearings, neither party is represented by an attorney, but any party may believe that one is needed. The Department makes every effort to conduct hearings in a straight-forward manner, and attempts to make certain that all parties get a fair hearing whether they are represented by legal counsel or not. If an attorney is hired, they are responsible to file an "Appearance" with the Department with a copy to the other party.

CAN ADDITIONAL ISSUES BE BROUGHT UP AT THE HEARINGS?

Generally, only the issues on the Hearing Notice, which were set forth on the claim, will be discussed at the Hearing. Issues can be added or expanded up to fourteen days before the hearing, or 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, in advance of the hearing, the nature of all evidence and submissions they plan to present. The party requesting the hearing is responsible for compiling all written evidence to be considered by the hearing officer. The compilation shall be indexed, tabbed, paginated, and in chronological order within each tabbed section. A member of the Department of Labor staff or the hearing officer shall waive this requirement upon finding that a party cannot comply due to lack of financial or technical resources. All parties to a dispute shall make all other parties aware of such evidence and submission no later than two (2) working days prior to the scheduled hearing.

WHAT AND WHO SHOULD BE BROUGHT TO THE HEARING?

Again, the Department cannot answer this question. Two copies of all written evidence (which may include payroll records, employee handbooks, notes and letters) are required. One copy of the evidence goes to the Department and the other copy goes to the other party. Parties can bring witnesses to testify to the facts of the case. The other party could ask these witnesses questions. Witnesses should not be brought only to say that someone is an honest person or a good employer as those references are not usually relevant to the claim.

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 other party would not be able to ask the questions.

HOW DOES THE HEARING OFFICER DECIDE A CASE?

The hearing officer considers the testimony and evidence of both parties to make a decision based on what is believed to be true; what has been proven by the evidence and relevant to the complaint in light of the Whistleblowers' Protection Act.

WHO HAS THE "BURDEN OF PROOF"?

The person making the complaint has the burden to prove his/her case by a preponderance of the evidence, meaning that it is more probable than not that he/she has a valid claim.

WHAT IS NOT ALLOWED AT THE HEARING?

Drugs, alcohol, weapons of any kind, violence, disrespect, threatening. Any action out of the regular order of a hearing will not be tolerated. Keep in mind that the parties are at the hearing to prove to the hearing officer, and not the other party, that they are right.

WHEN IS THE DECISION MADE?

A written decision will usually be 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 PARTY IS AGGREIVED BY A DECISION?

The decision will specify 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.
- 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.