



MIOSHA Fact Sheet

Appeals Division

Citation Hearings –

What to Expect & How to Prepare

When a Case is Going to Hearing

If settlement is not reached after the prehearing conference, the Appeals Division will refer the case to the Michigan Administrative Hearing System for an administrative hearing. The Appeals Division will also refer the case to the Michigan Department of Attorney General for representation of MIOSHA at the hearing. An employer may select anyone as its representative for the hearing including himself or herself, an attorney, non-attorney, owner, or other company employee.

The Michigan Administrative Hearing System will assign an Administrative Law Judge (ALJ) to preside over the hearing and mail a Notice of Hearing to all parties informing them of the date, time, and location of the hearing. Generally, MIOSHA citation hearings are held in the Lansing office of the Michigan Administrative Hearing System. For a map and directions see the MAHS Map and Directions document on the MIOSHA web page at www.michigan.gov/miosha.

What to Expect on Hearing Day

When you arrive for the hearing, inform the security desk that you are there for an administrative hearing. An escort from the hearing system will arrive to take you to the floor where hearings are held and direct you to the court room or a waiting area.

In the courtroom, the ALJ sits at a desk, and the parties and their witnesses and representatives sit at tables usually set up in front of the ALJ's desk. The ALJ will then identify each of the participants in the hearing for the record, and will summarize the issue being appealed, and what the Agency's previous decisions were in the case. Often, the ALJ or a party may request that the witnesses be sequestered, that is, asked to sit outside the hearing room while the other witnesses are testifying, so that the witnesses will not be influenced by each other's testimony.

The ALJ will usually ask the party with the burden of proof to present its case first. In MIOSHA citation cases, MIOSHA bears the burden of proving by a preponderance of the evidence that (1) the cited standards applies to the alleged condition; (2) the terms of the standard were not complied with; (3) employees were exposed to or had access to the violative condition; and (4) the employer knew or could have known of the violative condition with the exercise of reasonable diligence. Violations cited under the general duty clause or classified as willful or failure to abate contain slightly different or additional elements.

Often MIOSHA will begin by calling the compliance officer who conducted the MIOSHA inspection to testify, however, there is no required order in which MIOSHA must present its witnesses. The Assistant Attorney General will question each of its witnesses first. This is called direct examination. Then the employer's representative may ask questions of each witness, called cross-examination. Documents, items, videos or photos, called exhibits, may be introduced during the testimony of the witnesses to support the testimony. The

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Appeals Division

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ALJ will rule upon whether the exhibits will be admitted as evidence in the hearing so they may be considered by the judge in reaching his or her decision.

After MIOSHA, the employer will have the opportunity to call its own witnesses to testify and introduce its exhibits. The employer's representative will question each of its witnesses first followed by the Assistant Attorney General. The ALJ is responsible for getting all of the information needed to fully understand the facts of the case. An important function of the ALJ is fact-finding. This may mean that in some cases, the ALJ will take over the function of direct or cross-examination; ask additional questions to clarify a point; or exclude the testimony of some witnesses. The ALJ is also responsible for ensuring that, in general, the rules of evidence are followed in the hearing. For this reason, the ALJ may rule that certain testimony is hearsay or is not relevant to the case and cannot be allowed, or that certain documents cannot be accepted, or that the testimony of certain witnesses will not be permitted.

Hearings are tape recorded. It is important for everyone to speak loudly and slowly, and not rustle papers or interrupt others, so that a good recording can be made. Later, if a party requests it or a further appeal is taken, the tape recording is typed up as a transcript. It is the transcript that is reviewed at later levels of appeal. This transcript and the documents which are accepted as exhibits become the record of the hearing that is reviewed at higher levels of appeal.

At the conclusion of the hearing, the parties may be given an opportunity to make closing statements or submit a written closing brief summarizing their positions on the issues in the case.

What to Expect After the Hearing

After the hearing, the ALJ will review the testimony from the parties, some of which may be conflicting as to the facts. The ALJ may also take into account the manner in which the parties and their witnesses presented testimony and answered questions, and the consistency of a witness's testimony. This may help the ALJ in determining the credibility (believability) of the parties and witnesses. Based on these factors, the ALJ will make findings of fact, which will be included in a written decision. In addition, the ALJ's decision will contain a conclusion of law based upon how Michigan occupational safety and health law applies to the facts of the case. The ALJ's decision may be appealed to the Board of Health and Safety Compliance and Appeals by any losing party. The last page of the decision includes information about how to appeal.

How to Prepare for Hearing

Here are important tips on preparing for the hearing:

- Read the Notice of Hearing and follow the instructions included;
- Read the citations contained in your citation packet and review the standard cited for each violation via the MIOSHA website at www.michigan.gov/mioshastandards;
- Determine what witnesses you wish to have testify on your behalf and obtain subpoenas from the ALJ's office for any witness who will not appear voluntarily in accordance with [MCL 24.273](#);
- Write down questions you wish to ask the witnesses, as well as important points you wish to make on your own behalf; and
- Locate the documents, items, or photos you want to introduce at the hearing and bring at least three (3) copies of each (for the witness, the Assistant Attorney General, and the ALJ) to the hearing.

For more information on the citation hearing process, you may wish to review Part 4, [Procedures of the Board](#) (R 408.21401 - 408.21447), and Chapter 4 of the [Administrative Procedures Act](#), Act. No. 306 of Public Acts of 1969, as amended (MCL 24.271 et seq.).

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