



# MIOSHA Fact Sheet

## Appeals Division

### Discrimination Hearings –

### What to Expect & How to Prepare

#### When a Case is Going to Hearing

If an employee or employer files an appeal of a determination made by the MIOSHA Employee Discrimination Section regarding a discrimination complaint, the Employee Discrimination Section will refer the case to the Michigan Administrative Hearing System for a hearing. 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 discrimination hearings are held in the office of the Michigan Administrative Hearing System located in closest proximity to the employee's workplace where the alleged discriminatory action toward the employee occurred.

MIOSHA is the sole agency granted the authority to enforce compliance with the anti-discrimination protections and remedies afforded to employees under the Michigan Occupational Safety and Health Act. For this reason, hearings related to MIOSHA discrimination complaints are considered to have three parties: the employee, the employer, and MIOSHA. The MIOSHA Appeals Division provides representation of MIOSHA at the hearing. Often the MIOSHA Appeals Division representative will also be an attorney, however, this is not a requirement. The employer and the employee may also select anyone as their representatives for the hearing including himself or herself, an attorney, non-attorney, or other company employee.

#### What to Expect on Hearing Day

When you arrive, inform the front desk that you are there for an administrative hearing and you will be directed to the court room or a waiting area. Once inside the courtroom, the ALJ sits at a desk, and the parties 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.

To prevail in a MIOSHA discrimination hearing, the employee bears the burden of proving by a preponderance of the evidence that (1) the employee engaged in an activity protected under the MIOASH Act; (2) their employer was aware of the employee's protected activity; (3) the employer took an adverse employment action against the employee; and (4) there is a causal connection between the adverse action toward the employee and his or her protected activity, such as, but for the employee's protected activity of filing a MIOSHA safety complaint, he or she would not have been fired. For this reason, generally, the ALJ will have the employee present his or her case first, then the employer, then MIOSHA. The ALJ may also select a different order for the parties' presentation of the evidence.

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Appeals Division

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The party calling the witness 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 followed by cross examination by MIOSHA's representative. Documents, items, videos or photos, called exhibits, may be introduced during the testimony of the witnesses to support the testimony. The 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.

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 will decide how the law applies to the facts of the case, and the ALJ's decision will contain a conclusion of law. Generally, the ALJ will issue his or her decision within 30 working days of when the hearing concluded. The decision may be appealed to the appropriate circuit court 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;
- Contact the other parties' representatives to discuss intended witnesses, exhibits, etc. to avoid duplication;
- 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 four (4) copies of each (one for the witness, employee/employer rep, the MIOSHA Rep, and the ALJ) to the hearing.

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