



State of New Hampshire

Department of Labor

Ken Merrifield
Commissioner

Rudolph W. Ogden, III
Deputy Commissioner

Hugh J. Gallen
State Office Park
Spaulding Building
95 Pleasant Street
Concord, NH 03301
603/271-3176
TDD Access: Relay NH
1-800-735-2964
FAX: 603/271-6149
<http://www.nh.gov/labor>

A GUIDE TO WHISTLEBLOWERS COMPLAINT PROCESSES & HEARINGS

FORWARD AND DISCLAIMER:

This guide is a “plain language” explanation of what claimants and employers can expect when they are involved in a Whistleblowers’ Protection Act 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 you require additional information, please contact the hearings bureau at DOLHearings@dol.nh.gov or 603-271-3176 (ask to be directed to the hearings bureau).

WHISTLEBLOWERS COMPLAINT PROCESS

- After a whistleblower’ complaint has been accepted by this Department, a notice of whistleblowers complaint form is mailed to the employer.
- The employer has 10 days to respond from receipt of the complaint.
- If the employer responds with an objection, the hearings bureau will forward the objection to the claimant for review. 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 formal hearing on the issues.
- If there is no response from the employer, the claimant will be asked if he/she wishes to continue pursuit of the matter with a formal hearing. The claimant will be given 10 days to request formal hearing.
- Once hearing is scheduled, the parties will receive a notice of hearing. The notice of hearing will instruct the parties of the Date and Time for the hearing.
- Hearings are generally scheduled for 1 hour, meaning each side is given ½ hour to present its case. If a party to a hearing believes that 1/2 hour will be insufficient time to present its position, the party needs to request additional time as soon as possible. Additional time may not be available on the scheduled date and may result in a rescheduled 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 discussed and/or selected. The merits of the case ARE NOT discussed at the pre-hearing conference. Parties **do not** need to submit evidentiary packets for the pre-hearing conference.

PRIOR TO HEARING

- The Hearing Officer will receive a copy of the whistleblower complaint and any objection filed. It is the responsibility of the parties to compile additional evidence to support his/her position for hearing. The Department's administrative rules govern how this evidence is submitted for the purpose of hearing. The parties are instructed to review Lab 204.07 (a) & (b). http://www.gencourt.state.nh.us/rules/state_agencies/lab200.html
- Any evidence submitted for review at hearing needs to be exchanged with the other side at least two business days prior to hearing. If evidence is being submitted to the Department prior to hearing, those submissions can be emailed to DOLHearings@dol.nh.gov. Evidence submitted by email needs to be copied to the other side or it will be rejected.
- If a party needs to request a continuance to a scheduled hearing, the party should put that request in writing, copied to the other side. The continuance request should be filed as soon as possible. It should state whether or not the other side agrees to the continuance. It should state why a continuance is necessary. Continuance request filed less than 7 days prior to the scheduled hearing need to demonstrate a "compelling need" as to why a continuance is necessary. These requests can be submitted to the hearings bureau at DOLHearings@dol.nh.gov.

WHAT HAPPENS IF MY CASE IS SCHEDULED FOR HEARING AND THE PARTIES HAVE SETTLED OR I HAVE DECIDED I DO NOT WANT TO PROCEED WITH FORMAL HEARING?

- By filing a whistleblower complaint a party understands that the matter might be scheduled for a hearing. If at any time prior to the hearing a party wishes to withdraw his/her request for hearing, the request to withdraw should be mailed or emailed to the Hearings Bureau. The request should be copied to the other side. The request should state that the claimant no longer wishes to pursue the whistleblower claim filed. Those requests can be emailed to DOLHearings@dol.nh.gov.

WHAT HAPPENS AT A HEARING?

- Hearings usually start on time and will usually 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. If a party is going to be late, they should call, or the hearing may take place without them.
- 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 claimant presents his/her case first, including the presentation of evidence and any witnesses. The employer can then ask the claimant and witnesses any questions, and then presents the employer's case. The claimant 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 claimant) shall give his/her closing statement last.

CAN A PARTY TESTIFY BY TELEPHONE/VIDEO?

- The rules of the Department allow for telephonic/video participation at hearings. However, this needs to be approved by the Department pursuant to Lab 203.007 prior to hearing.

- Prior to filing a request to appear via video/telephone a party should seek the assent/agreement of the other side. If the parties agree on telephonic/video participation, the party/parties should notify the Department of this agreement.
- If the parties disagree concerning video/telephonic participation, the party requesting to appear remotely shall file that request with the Hearings Bureau as soon as possible. That request can be emailed to DOLHearings@dol.nh.gov. The request should explain why telephonic/video participation is necessary. This request needs to be copied to the other side.
- The opposing side will be given the opportunity to file a formal objection.
- Upon receipt of the request and objection, the Hearings Administrator, or her designee, will make a determination whether or not remote participation will be allowed.

WHAT HAPPENS IF THE OTHER PARTY DOES NOT 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 Whistleblowers Complaint hearings, neither party is represented by an attorney, but any party may believe that one is needed. 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 14 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. Lab 204.07 requires evidence submission to be filed in an organized manner. Submission of evidence packets that are numbered and organized allows a hearing officer to easily follow along with the parties during the hearing. Remember that all evidence that is submitted for hearing needs to be exchanged with the other party no later than two (2) working days prior to the scheduled hearing.
- If evidence has not been properly exchanged with the opposing side, even if it was timely filed with the Department, it may be disallowed from hearing.

WHAT AND WHO SHOULD BE BROUGHT TO THE HEARING?

- As a Whistleblowers Complaint participant, it is up to the party to make a determination as to what evidence/exhibits/witnesses should be presented to a Hearings Officer at the time of hearing.

- Parties can bring witnesses to testify to the facts of the case. The name of each witness needs to have been previously disclosed (at least two business days before) to the other side.
- The other party could ask these witnesses questions.

HOW DOES THE HEARING OFFICER DECIDE A CASE?

- The Hearing Officer takes both parties' testimony and submissions into consideration and makes a decision based on what is believed to be true; what has been proven by the evidence and relevant to the claim in light of applicable law.

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, 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 DISAGREES WITH A DECISION?

- Any party aggrieved by the Whistleblower Decision may appeal in the manner specified by RSA 541, by applying in writing for a rehearing to the Commissioner of Labor within thirty (30) days of the date of this Decision, specifying fully the grounds upon which it is claimed that the Decision is unlawful or unreasonable.
- Motions to reconsider are allowed by Department Rule. If a party believes there was an error of fact or law in the decision, the party can file a motion to reconsider/motion for rehearing with the Department. These motions need to be filed within 10 days of the date of the decision. The motions need to be copied to the other side. Motion for reconsideration are governed by Lab204.09.
http://www.gencourt.state.nh.us/rules/state_agencies/lab200.html
- Pursuant to Lab 204.10, the Department has 10 days to respond to motions for reconsideration.

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.