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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Administrative Hearing Standard No. 2021-1

Administrative Law Judges, Hearing Officers, and Tax Tribunal Members to Conduct Proceedings Remotely with Limited Exceptions

Throughout the pandemic, the Michigan Office of Administrative Hearings and Rules (MOAHR) has remained committed to the continuation of MOAHR's organizational mission – to provide a timely, professional, sound, impartial and respectful administrative hearing process consistent with all legal requirements – while also providing a safe environment for both the public and staff.

Rules 114 and 121 of the Michigan Administrative Hearing System Administrative Hearing Rules, R 792.10114 and R 792.10121, authorize administrative law judges, hearing officers, and Tax Tribunal Members to conduct prehearing conferences and hearings “by telephone, by videoconference, or other electronic means” and Rule 121 further provides that “[a]ll substantive and procedural rights apply to all hearings under this rule.”¹

MOAHR's successful transition to the use of remote technology for most proceedings has resulted in numerous benefits, while still maintaining the tenets of procedural fairness, including: increased accessibility, convenience, and time management for all parties and hearing attendees, including persons with disabilities who may have difficulty appearing in-person; elimination of the need to secure transportation and take time off from work or away from childcare; reduced costs of travel and parking, and the related reduced negative impact to the environment; and greater efficiencies for MOAHR and all parties in the increased number of hearings held and decisions issued.

MOAHR's successful transition to the use of remote technology for most proceedings has demonstrated that many proceedings can and should continue to be conducted remotely except in specific circumstances where remote proceedings may not be possible or workable due to accessibility limitations, specific evidentiary issues, or other unique circumstances that preclude the effective use of remote proceedings.

¹ Until October 18, 2021, Emergency Rule Amending Rule 101, R 792.10101, authorizes hearings before the Michigan Employment Relations Commission (MERC) and the Public Service Commission (PSC) to be conducted by remote means. Thereafter, hearings before the MERC, as well as the Michigan Tax Tribunal, may require additional discretion in certain circumstances for remote hearing alternatives, including a hybrid approach. Likewise, hearings before the PSC, housed within the Commission's Lansing building, may be held in person or using a hybrid approach at the request of the Commission, if the agency provides assurances to MOAHR that adequate safety procedures will be followed, similar to the Specific Requirements for In-Person Hearings at MOAHR's offices.

Therefore, in accordance with this information and consistent with my authority under Executive Orders 2019-06 and 2011-4 to manage the operations of MOAHR, develop standards for the conduct of administrative hearings, increase efficiency and assure the effective delivery of adjudicative services, the following administrative hearing standard is established and is to be applied by MOAHR's administrative law judges, hearing officers, and Tax Tribunal Members:

Proceedings, including pre-hearing conferences and hearings, will by default be scheduled to be conducted remotely, with a party's request for an in-person proceeding to be considered on a case-by-case basis and granted only upon: (i) a reasonable, good cause showing of accessibility limitations, specific evidentiary issues, or other unique circumstances; and (ii) all parties' agreement to comply with Specific Requirements for In-Person Hearings, attached and incorporated herein, and available on MOAHR's website.

All parties appearing before MOAHR's administrative law judges, hearing officers, and Tax Tribunal Members are expected to comply with these requirements to ensure a safe, orderly, respectful, and fair process for all hearing participants. A party's failure to comply with these requirements will result in conversion of the in-person hearing to a remote proceeding.

Unless already authorized for electronic filing using an electronic filing system, or specifically authorized by an administrative law judge, hearing officer, or Tax Tribunal Member, all documents filed with MOAHR will be accepted by e-mail filing for all administrative hearing case types. An e-mail filing shall be sent to an approved MOAHR group e-mail box rather than an individual staff person, contain the case docket number, and be copied to all other parties, attorneys and representatives to the matter.

MOAHR Policy and Procedure No. 15 is rescinded with the issuance of this Administrative Standard No. 2021-1, which is effective immediately.



August 12, 2021

Suzanne D. Sonneborn
Executive Director and Chief Regulatory Officer
Michigan Office of Administrative Hearings and Rules



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Specific Requirements for In-Person Hearings at MOAHR's Offices

All in-person hearings at MOAHR's offices will adhere to the following requirements:

1. To facilitate in-person hearings as necessary, MOAHR will determine the capacity for each hearing room, attorney/client room and waiting area based on the size of the room or space and available seating. MOAHR will limit access to these spaces accordingly.
2. All persons (including parties, attorneys, authorized representatives, witnesses, court reporters, agency employees, family members, media reporters and public observers) who wish to attend in-person hearings at MOAHR's offices must present valid government or school issued photo identification such as current driver's license, state identification card, school identification card, or national passport at the first-floor security desk.
3. All persons who wish to attend in-person hearings at MOAHR's offices must complete a COVID-19 health screening questionnaire prior to being allowed access to MOAHR's hearing offices and hearing rooms.
4. Any person, including a subpoenaed witness, who is required by law or regulation to attend a hearing and who is diagnosed with or experiences symptoms of COVID-19 prior to the in-person hearing date shall immediately notify MOAHR by telephone at (517) 335-2484, except that for persons attending a hearing with the Tax Tribunal, notification shall be by email to this address: taxtrib@michigan.gov, or by telephone at 517-335-9760.
5. Any person who is diagnosed with or experiencing symptoms of COVID-19 or who has had known exposure to a person diagnosed with or experiencing symptoms of COVID-19 within 14 days of the date seeking entry to the hearing office will not be granted access to the hearing office, and arrangements will be made to allow for their participation or testimony to be accomplished via remote access.
6. All persons granted access to the hearing office shall report first to a MOAHR receptionist and provide their names and associated cases before being directed to the assigned hearing room, except that all persons attending a hearing with the Tax Tribunal will be escorted from the 1st floor to the hearing room.
7. All persons granted access to the hearing office shall abide by the capacity limitations imposed on the reception areas and hearing rooms, which limitations are posted at the hearing office front desk and on each hearing room door.

8. All persons granted access to the hearing office must wear an appropriate non-medical grade face covering (mask) at all times of the hearing process, including entering and exiting the hearing office, unless the face covering cannot be medically tolerated or temporary removal of the face covering is necessary to make an accurate record. For persons incapable or unwilling to wear a face covering, arrangements will be made to allow for their participation or testimony to be accomplished via remote access.
9. All persons granted access to the hearing office shall maintain social distancing of at least six feet from one another to the maximum extent possible (except for immediate family groups), including the questioning of witnesses by attorneys/representatives and the placement of chairs in a hearing room.
10. Any proposed exhibits shall be submitted in advance of hearing to MOAHR and the opposing party or parties by regular mail or in electronic format (preferred) no later than 7 days in advance of hearing. For proposed exhibits submitted in electronic format, the following requirements are preferred: (i) file attachments are limited to 25mb or smaller per email; and (ii) PDF files are the preferred file type.
11. Any person who becomes aware of a dangerous, unsanitary or unsafe condition in the hearing office must immediately notify the administrative law judge or the MOAHR front desk receptionist.
12. Any person who is diagnosed with or experiences symptoms of COVID-19 within 14 days after attending a hearing must, within 24 hours, notify MOAHR's worksite representative, Wendy Wisniewski, by telephone at (517) 282-7812 or by e-mail to: WisniewskiW1@michigan.gov.
13. Hearing rooms will be cleaned and disinfected on a regular basis and hand sanitizer will be made available to all persons in the reception area of the hearing office, as well as in the hearing rooms.