

**Wage and Hour Division, Labor**

**§ 801.66**

the time period includes the next business day.

(d) When a request for hearing is served by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

**§ 801.60 Commencement of proceeding.**

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 801.53 of this part.

**§ 801.61 Designation of record.**

(a) Each administrative proceeding instituted under the Act and this part shall be identified of record by a number preceded by the year and the letters "EPPA".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

**§ 801.62 Caption of proceeding.**

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In Matter of \_\_\_\_\_, Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

**REFERRAL FOR HEARING**

**§ 801.63 Referral to Administrative Law Judge.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 801.53 of this part, the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing

signed by the person requesting such hearing or the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

**§ 801.64 Notice of docketing.**

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

**PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE**

**§ 801.65 Appearances; representation of the Department of Labor.**

The Associate Solicitor, Division of Fair Labor Standards, or Regional Solicitor shall represent the Department in any proceeding under this part.

**§ 801.66 Consent findings and order.**

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

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(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into, in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

**§ 801.67 Decision and Order of Administrative Law Judge.**

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers, a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 801.53 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) If any party desires review of the decision of the Administrative Law Judge, a petition for issuance of a Notice of Intent shall be filed in accordance with § 801.69 of this subpart.

(g) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the Secretary, pursuant to § 801.70 of this subpart issues a Notice of Intent to Modify or Vacate the Decision and Order.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

**MODIFICATION OR VACATION OF DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE**

**§ 801.68 Authority of the Secretary.**

(a) The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(1) Is inconsistent with a policy or precedent established by the Department of Labor;

(2) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(3) Awards attorney fees and/or other litigation expenses pursuant to the