

**Title 8—DEPARTMENT OF  
LABOR AND INDUSTRIAL RELATIONS  
Division 30—Division of Labor Standards  
Chapter 5—Prevailing Wage Arbitration**

**PROPOSED AMENDMENT**

**8 CSR 30-5.020 Hearing Procedures for Arbitration.** The division proposes to amend sections (1), (3), and (5); delete sections (6), (7), (8), and (11); and renumber the remaining sections.

*PURPOSE: This amendment serves to reduce unnecessary restrictive language as well as eliminate outdated and redundant requirements. This amendment also renumbers the regulation in light of the amendments.*

(1) Date, Time and Site for Arbitration Hearing. All arbitration hearings *[shall]* **will** be held in Jefferson City unless otherwise agreed to by the parties. The parties shall respond to requests for hearing dates from the arbitration service provider within ten (10) days of receipt. Upon the request of either party or the arbitration service provider, the arbitrator *[shall have]* **has** the authority to convene a scheduling conference call and/or issue a Notice of Hearing setting the date, time and place for hearing.

(3) Postponement or Cancellation. The arbitrator, for good cause shown, may postpone or cancel the hearing upon the request of a party or upon his or her own initiative. The parties can also agree to a postponement or cancellation of a hearing. Any postponement or cancellation fees owed to the arbitration service provider and/or the arbitrator shall be paid by the party requesting a postponement or cancellation. If the parties agree to a postponement or cancellation of a hearing, the postponement or cancellation fee shall be divided evenly between the parties. In the event of a cancellation of the arbitration after the commencement of the arbitration hearing, all fees owed to the arbitrator for services rendered shall be paid by the party requesting the cancellation. If an employer resolves the matter after requesting arbitration but prior to an arbitrator's award, such resolution *[shall]* **will** be considered a cancellation of the arbitration and the employer shall pay all fees owed to the arbitrator for services rendered.

(5) Commencement of Hearing. A hearing *[shall]* **will** be opened by the following actions:

(A) Administration of the oath to all parties by the arbitrator; and

(B) Recording of the date, time and place of the hearing and the presence of the arbitrator, the parties, and counsel, if any.

*[(6) Evidence.*

*(A)The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to reach an understanding and determination of the dispute. An arbitrator can subpoena any witnesses and any documents upon the request of any party. If a party, or any person or organization within the control of a party, fails to obey a subpoena of an arbitrator, the arbitrator shall treat the evidence requested but not produced as establishing an inference favorable to the position of the party who subpoenaed the item, subject to the opposing party's right to seek an order in Circuit Court quashing or limiting*

*the scope of the subpoena. In the event a party fails to comply with a subpoena, the requesting party may seek to enforce the subpoena in Circuit Court. The arbitrator shall make all decisions regarding the relevance and materiality of the evidence offered and conformity to legal rules of any evidence shall not be necessary. All of the evidence shall be taken in the presence of the arbitrator and all the parties except where any of the parties is absent in default or has waived the right to be present.*

*(B) All documents that are not filed with the arbitrator before or at the hearing, but arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the arbitration service provider for transmission to the arbitrator or transmitted to the arbitrator directly if the parties agree. All parties shall be able to inspect the documents and object to their relevance and materiality to the dispute prior to the arbitrator making a determination of their relevance and materiality.*

*(7) Exhibits. The arbitrator may receive into evidence exhibits offered by the parties. The names and addresses of all witnesses and exhibits in order received shall be made part of the record. The arbitrator shall afford each party equal opportunity for the presentation of relevant proofs. Final determinations of relevance shall be made by the arbitrator.*

*(8) Witnesses. Each party shall provide to the opposing party and the arbitrator a list of witnesses that it intends to call to testify or provide written statements. Such list shall be provided to the opposing party and arbitrator at least two (2) business days prior to the hearing. At the discretion of the arbitrator, failure to do so may result in the party's forfeiture of its right to call the witness. If a party wants to add persons to its witness list within two (2) business days of the hearing or at the hearing, the arbitrator may permit the witness to testify if the arbitrator finds it to be in the interest of fairness and relevant.]*

*[(9)] (6) Recording and Transcripts. All hearings shall be tape-recorded. The tape-recording shall be retained by the arbitrator for a period in concurrence with the statute of limitations for an employee to bring a private action for the recovery of wages. Either party may request a written transcript at any time within this period, and the requesting party will bear the cost of the transcript, unless otherwise agreed by the parties.*

*[(10)] (7) Communication with the Arbitrator. There shall be no direct communication between the parties and the arbitrator on substantive matters relating to the case other than at oral hearings, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the arbitrator shall be directed to the arbitration service provider for transmittal to the arbitrator.*

*[(11) Closing the Hearing. The arbitrator shall inquire of all parties whether they have any additional exhibits or witnesses to present. The arbitrator shall afford each party the opportunity to present an oral closing statement. Once both parties indicate that they have no more evidence to present or the arbitrator determines that all necessary relevant and non-duplicative evidence has been presented and the record is complete, the arbitrator shall declare the hearing to be closed. If briefs or other documents are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for filing with the arbitration service provider or directly with the*

*arbitrator. The time limit within which the arbitrator is required to make an award shall begin to run, in the absence of another agreement by the parties, on the closing date of the hearing.]*

*AUTHORITY: section 290.240(2), RSMo [2000] **2016**. Emergency rule filed July 19, 2007, effective Aug. 28, 2007, expired Feb. 28, 2008. Original rule filed July 19, 2007, effective Feb. 29, 2008. Amended: Filed June 19, 2018.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Labor Standards, Attn: Matt Cowell, Director, PO Box 449, Jefferson City, MO 65102-0449. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*