

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:015. Issuance of citations and procedure in workers' compensation enforcement hearings.

RELATES TO: KRS Chapter 13B, 342.990

STATUTORY AUTHORITY: KRS 13B.090(3), 13B.170, 342.267, 342.260, 342.990(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing administrative hearings. KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the department[~~office~~] and administrative law judges. KRS 13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS 342.260(3) requires processes and procedures to be as summary and simple as reasonably possible. KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Commissioner" is defined by KRS 342.0011(9). [~~The definition of "hearing officer" shall be governed by KRS 13B.010(7).]~~

(3) "Business[~~Working~~] day" means a day that falls on a Monday through Friday, with the exception of a state or federal holiday, or other day on which the Department [~~Office~~] of Workers' Claims is officially closed for business.

Section 2. (1) Prior to issuing a notice of citation and penalty, the commissioner [~~executive director~~] may issue a show cause order to a person who has allegedly violated KRS Chapter 342 or an administrative regulation promulgated thereunder to appear at an informal conference to show cause why a citation should not be issued.

(2) The show cause order shall include the following:

- (a) Detailed explanation of alleged violations;
- (b) Statutes or administrative regulations that were allegedly violated; and
- (c) Date, time and place of show cause informal conference.

(d) If the commissioner [~~executive director~~] is not presiding over the informal conference, the name of the commissioner's designee [~~presiding hearing officer~~].

(3) The person issued a show cause order shall be present on the specified date, time and place and show cause why a citation should not be issued.

(4) The commissioner [~~executive director~~] or the commissioner's designee [~~hearing officer~~] shall gather relevant evidence concerning the alleged violations of KRS Chapter 342 from a representative of the Department [~~Office~~] of Workers' Claims and the person to whom the show cause order was issued.

(5) If the commissioner [~~executive director~~] is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and a formal hearing, an agreement may be entered.

(6) If the commissioner's designee [~~a hearing officer~~] is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and formal hearing, a recommended agreed order shall be submitted to the commissioner [~~executive director~~] for approval.

(7) If the parties do not resolve the matter by agreement and the commissioner's designee [~~a hearing officer~~] presides over the informal conference, the commissioner's designee [~~hearing officer~~] shall issue a recommended order which includes his findings of fact, conclusions of law, and recommended disposition to the commissioner [~~executive director~~] as to whether a citation should be issued.

(8) The commissioner [~~executive director~~] shall review the evidence and if applicable the recommended order and either:

(a) Issue a citation for a violation or violations of KRS Chapter 342 or the administrative regulations promulgated thereunder;

(b) Issue a statement that no citation is warranted; or

(c) Request additional evidence for further review.

(9) The commissioner has the discretion to immediately issue a citation for any violation of KRS Chapter 342 or the administrative regulations promulgated thereunder without issuing a show cause order or conducting an informal conference.

Section 3. Issuance of Citation and Notice of Contest. (1) If the commissioner [~~executive director~~] initiates enforcement of a civil penalty pursuant to KRS 342.990, the "notice of citation and penalty" shall be delivered to the appropriate party by certified mail or hand-delivered by authorized personnel of the Department [~~Office~~] of Workers' Claims.

(2) The party to whom a notice of citation and penalty has been delivered may contest the citation and penalty by filing a written "notice of contest" with the commissioner [~~executive director~~] within fifteen (15) working days of the receipt of the notice of citation and penalty.

(3) A notice of contest shall state the following:

(a) The specific grounds for [~~Grounds of~~] the contest; and

(b) Whether the fact of a violation or level of the civil penalty, or both, is being contested.

(4) If a notice of contest is not timely filed, the citation shall be deemed final and the penalty due for payment.

Section 4. Assignment to Administrative Law Judge; Prehearing Procedure. (1) [~~As soon as practicable upon receipt of a notice of contest, the executive director shall direct the chief administrative law judge to assign the matter to an administrative law judge for a hearing.~~

(2)] In accordance with KRS 342.990(5), the administrative law judge may require parties to file a stipulation of uncontested facts not later than five (5) business [~~working~~] days prior to the scheduled hearing date.

(2) [(3)] The administrative law judge may require each party to file a witness and exhibit list described in KRS 13B.090(3) not later than five (5) business [~~working~~] days prior to the scheduled hearing date with the administrative law judge and all other parties.

Section 5. Formal Hearing. (1) An administrative law judge shall preside over the conduct of the formal hearing and shall regulate the course of the proceeding in accordance with KRS Chapter 13B and any prehearing order issued by the administrative law judge.

(2) A party may submit proof at the formal hearing through the use of depositions, if the other parties received timely notice and had the opportunity to attend.

Section 6. Orders. (1) The administrative law judge shall determine if the commissioner's [~~executive director's~~] citation was properly issued and the penalty appropriately assessed and issue a final order in accordance with KRS 342.990(5) and 13B.120.

(2) The administrative law judge's final order shall be appealable to the Franklin Circuit Court in accordance with KRS 342.990(6) and 13B.140.

Section 7. Appeal/Payment of Fine. (1) If a party does not file a petition of appeal pursuant to KRS 342.990 and 13B.140, the order shall be deemed final and the civil penalty assessed in the order shall be due.

(2) A civil penalty that is not appealed to the Franklin Circuit Court shall be paid by certified check or money order payable to the Kentucky State Treasurer. The fine shall be mailed to the Department of Workers' Claims, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. [~~Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601 ATTN: Enforcement Docket.~~]

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 18, 2021 at 2:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to establish the procedure for enforcement hearings under KRS Chapter 342.

(b) The necessity of this administrative regulation: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing administrative hearings. KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to

carry on the work of the department and administrative law judges. KRS 13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS 342.260(3) requires processes and procedures to be as summary and simple as reasonably possible. KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for those enforcement hearings under KRS Chapter 342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment updates language to match the Department's current structure and more accurately describes the current process once an enforcement matter is assigned to an administrative law judge.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to update the language to match the Department's current structure and more accurately describe the current process once an enforcement matter is assigned to an administrative law judge.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the Department's current structure and more clearly states the process once assigned to an administrative law judge.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those receiving and challenging an enforcement action by the commissioner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employers, insurance carriers, self-insureds groups, and individual self-insured employers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will not be required to take any new action based upon the amendments to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be aware of the enforcement process.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all agencies or departments of government with employees, insurance carriers for those entities, self-insured groups for those entities, and any of those entities currently authorized to self-insure.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.090(3), 13B.170, 342.260, 342.990.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendments to this administrative regulation should have no effect on current expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: