



Rules of
Department of Labor and Industrial
Relations

Division 30—Division of Labor Standards
Chapter 5—Prevailing Wage Arbitration

Title	Page
8 CSR 30-5.010 Filing for Arbitration.....	3
8 CSR 30-5.020 Hearing Procedures for Arbitration	3
8 CSR 30-5.030 Awards by the Arbitrator	4



Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Division 30—Division of Labor Standards

Chapter 5—Prevailing Wage Arbitration

8 CSR 30-5.010 Filing for Arbitration

PURPOSE: This rule establishes the procedures for filing for arbitration under Missouri's Prevailing Wage Law.

(1) An employer shall have forty-five (45) days from the date of notice of penalty for violations of sections 290.210 to 290.340, RSMo, to dispute the notice of penalty. Upon receipt of the written notice of dispute from the employer, the department shall notify the employer of its right to arbitration. Within ten (10) days of an employer's notification of the right to arbitration, an employer that wishes to arbitrate the matter shall submit to the department a Request for Arbitration (Request) along with any filing fees required by the arbitration service provider. Request for Arbitration forms may be obtained by contacting the Division of Labor Standards. The date of submission of a Request is the date the Request is postmarked or the date the department receives the Request by facsimile. Within ten (10) days of the department's receipt of a request under this rule, the department shall mail a copy of the Request along with the department's guidelines for arbitration to the American Association of Arbitration (AAA) or other arbitration service provider if the other arbitration service provider is mutually agreed to by the parties. Included in this information shall be the department's criteria for arbitrators relating to residence and cost per hour.

(2) The arbitration service provider shall promptly submit simultaneously to each party participating in the arbitration an identical list of names of seven (7) persons chosen from a panel of fifty (50) arbitrators that meet the geographic, cost and other criteria set by the department. Choosing the arbitrator from the list of seven (7) shall be done in conformance with standard AAA procedures or other arbitration procedures if the other procedures are mutually agreed to by the parties.

(3) No person shall serve as an arbitrator in any arbitration under these rules in which that person has any past or existing financial or personal interest in the result of the arbitration. Any prospective or designated arbitrator shall immediately disclose to the arbi-

tration service provider any circumstance likely to affect impartiality, including any bias or financial or personal interest in the result of the arbitration. Such disclosure shall also include conflicts of interest that might arise after the arbitration process has already started. Upon the arbitrator service provider's receipt of any circumstance likely to affect impartiality from the arbitrator or another source, the arbitration service provider shall communicate the circumstance to the parties. Upon objection of a party to the continued service of an arbitrator, the arbitration service provider shall, after consultation with the parties, determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(4) For any filing or notice deadlines associated with arbitration under this rule that fall on Saturday, Sunday, or a legal holiday, the filing or notice shall be deemed timely if accomplished on the next day which is neither a Saturday, Sunday, nor a legal holiday.

AUTHORITY: section 290.240(2), RSMo 2000. Emergency rule filed July 19, 2007, effective Aug. 28, 2007, expired Feb. 28, 2008. Original rule filed July 19, 2007, effective Feb. 29, 2008.*

**Original authority: 290.240, RSMo 1957, amended 1969.*

8 CSR 30-5.020 Hearing Procedures for Arbitration

PURPOSE: This rule establishes the arbitration procedures to be used under Missouri's Prevailing Wage Law.

(1) Date, Time and Site for Arbitration Hearing. All arbitration hearings shall 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 the authority to convene a scheduling conference call and/or issue a Notice of Hearing setting the date, time and place for hearing.

(2) Notice of Hearing. The arbitrator shall issue to both parties a written Notice of Hearing detailing the arrangements agreed to by the parties or ordered by the arbitrator at least

ten (10) days before the hearing date, unless otherwise agreed to by the parties.

(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 be considered a cancellation of the arbitration and the employer shall pay all fees owed to the arbitrator for services rendered.

(4) Costs. Unless otherwise provided in this rule or by Missouri law, each party shall be responsible for paying all costs associated with presenting its case before the arbitrator. All filing fees shall be paid in accordance with the guidelines of American Association of Arbitration (AAA) or other arbitration service provider mutually agreed to by the parties. All administrative fees billed by the arbitration service provider shall be divided evenly between the parties. All costs billed by the arbitrator shall be divided evenly between the parties unless otherwise provided for in 8 CSR 30-5.030(2) and (3) and/or sections (3) and (4) of this rule.

(5) Commencement of Hearing. A hearing shall 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) Recording and Transcripts. All hearings shall be tape-recorded. The tape-recording shall be retained by the arbitrator for a peri-

od 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) 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. Emergency rule filed July 19, 2007, effective Aug. 28, 2007, expired Feb. 28, 2008. Original rule filed July 19, 2007, effective Feb. 29, 2008.*

**Original authority: 290.240, RSMo 1957, amended 1969.*

8 CSR 30-5.030 Awards by the Arbitrator

PURPOSE: This rule establishes guidelines as to when an arbitrator's award must be rendered and the form in which it must be rendered, the result of a resolution of the controversy prior to an arbitrator's award, the release of arbitration documents for judicial proceedings and a party's recourse for an

arbitrator's failure to follow 8 CSR 30-5.010 through 8 CSR 30-5.030.

(1) Time of Determination.

(A) The arbitrator shall issue the arbitration award promptly and, unless otherwise agreed to by the parties, no later than thirty (30) days from the date of closing the hearings or no later than thirty (30) days after receipt by the arbitrator of the briefs and any attached exhibits. All awards made by the arbitrator are final and binding.

(B) The determination shall be deemed to be rendered on the date it is postmarked or otherwise transmitted to the parties by the arbitrator, whether by regular mail or electronically. Decisions cannot be rendered by telephone.

(C) If a determination is transmitted electronically or by facsimile, the arbitrator shall promptly deliver an original to the parties.

(2) Form of the Arbitration Award. The arbitration award shall be in writing and shall be signed by the arbitrator. A party shall advise the arbitrator in writing, by no later than the conclusion of the hearing, whenever it would like the arbitrator to accompany the arbitration award with an opinion explaining the reasoning for the award. All costs incurred as a result of the opinion shall be paid by the party who requested the opinion. If both parties request the opinion, all costs incurred as a result of the opinion shall be divided evenly between the parties.

(3) Resolution Prior to Arbitrator's Award. If at any time prior to the arbitrator rendering an award in the matter the employer pays the back wages as determined by the department, the matter shall be deemed resolved and the proceedings shall conclude. All costs shall be paid in accordance with 8 CSR 30-5.020(3) and (4) and section (2) of this rule.

(4) Release of Documents for Judicial Proceedings. The arbitrator shall, upon the written request of a party, furnish such party, at the requesting party's expense, copies certified by his or her original signature to be authentic replications of any papers in the arbitrator's possession that may be required in judicial proceedings relating to arbitration.

(5) Failure to Comply with Determination of Arbitrator. If the employer fails to pay all wages due as determined by the arbitrator within forty-five (45) days following the date the arbitrator's award is rendered, or if the employer fails to exercise the right to seek



arbitration, the department may then pursue an enforcement action to enforce the monetary penalty provisions of 290.250.1, RSMo. If the court orders payment of the penalties as prescribed in 290.250.1, RSMo, the department shall be entitled to recover its actual cost of enforcement from such penalty amount.

AUTHORITY: section 290.240(2), RSMo 2000. Emergency rule filed July 19, 2007, effective Aug. 28, 2007, expired Feb. 28, 2008. Original rule filed July 19, 2007, effective Feb. 29, 2008.*

**Original authority: 290.240, RSMo 1957, amended 1969.*