

Oklahoma Department of Labor

Oklahoma Administrative Code
Title 380 – Department of Labor
Chapter 30 – Protection of Labor



Mark Costello
Commissioner of Labor

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SUBCHAPTER 1. GENERAL PROVISIONS

380:30-1-1. Purpose

The purpose of the rules in Chapter 30 is to establish the definitions and procedures for enforcement by the Department of the provisions of Title 40, Oklahoma Statutes, Sections 165.1 through 165.11, and the Oklahoma Minimum Wage Act, 40 O.S. §§ 197.1 et seq. for agreed upon wages and benefits and for payment of minimum wages as mandated by State law.

380:30-1-2. Definitions

"Commissioner", as used in these Rules, means the Commissioner of Labor or the Commissioner's designee.

"Bona fide disagreement" means, as used in 40 O.S. 165.4, a dispute in which the employer holds an honest and sincere belief that the wages claimed are not owed so long as that belief is supported objectively by the facts and circumstances and the employer took reasonable steps to ascertain the facts and circumstances.

"Claimant" means the same as "employee" or someone claiming wages due on behalf of a deceased employee.

"Department" and **"Agency"** mean the Department of Labor and/or the Wage & Hour Division of the Department of Labor.

"Earned and due" means that wages derived from labor or professional services are presently and immediately matured and enforceable and the time for payment has arrived. The term "earned and due" necessitates that all conditions precedent to payment have happened, have been met or have been performed. If the employment agreement is based either in whole or in part on payment of commissions, the terms of the agreement will control the time when commissions are earned and due. The Department of Labor has jurisdiction over only those claims for wages that are earned and due at the time the wage claim is filed. Any claims for "future wages" will be summarily rejected by the compliance officer or dismissed by the administrative hearing officer.

"Electronic means" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, electronic debit cards, and transfers initiated by telephone.

"Employee" means any person permitted to work by an employer. Employee shall not include: Business owners, independent contractors, volunteers, co-partners, or joint venturers. For purposes of these rules,

those persons who are permissibly exempt from the Workers' Compensation statute, as defined in 85 O.S. § 3, shall be considered "business owners" and not employees. A person who, pursuant to the terms of an employment agreement, has as their only form of compensation a potential interest in the proceeds or profits of a business (commonly called "working for sweat equity"), shall be considered a business owner and not an employee.

"Employer" means every individual, partnership, firm association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state. "Employer" shall also include county, city, and municipal corporations, and all other local government entities. "Employer" shall not include the State of Oklahoma or any entity or branch of the United States government operating in this State.

"Established policy" means a statement, written or oral, or a course of conduct from or by the employer, of general applicability to all similarly situated employees regarding the business affairs of the employer. An "established policy" includes a written employment contract, a written employee manual or employment policy, or a written promise by the employer. An

"Established policy" also includes a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.

"Independent contractor" means one who renders service in the course of independent employment or occupation according to his own methods and is subject to his employer's control only as to the end product or final result of his work and not as to the means whereby it is to be accomplished. The following factors are considered significant in determining the employment relationship and whether a person is an employee or an independent contractor:

- (A) the nature of the contract between the parties, whether written or oral;
- (B) the degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent;
- (C) whether or not the one employed is engaged in a distinct occupation or business for others;
- (D) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (E) the skill required in the particular occupation;
- (F) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;

- (G) the length of time for which the person is employed;
- (H) the method of payment, whether by the time or by the job;
- (I) whether or not the work is a part of the regular business of the employer;
- (J) whether or not the parties believe they are creating the relationship of master and servant; and
- (K) the right of either to terminate the relationship without liability. No one factor is controlling, and the relationship must be based on the set of facts peculiar to the case.

"Offsets" means deductions (as defined in this Subchapter); the value of any of the employer's money or property retained by the employee after termination; the amount of any prior overpayment of wages to the employee; and the amount of any prior valid final judgment obtained in a court of record or through an administrative agency, by the employer against the employee.

"Respondent" means the same as "Employer."

380:30-1-3. Wage and hour claims - generally [REVOKED]

380:30-1-4. Wage and hour hearings-generally

All hearings on claims conducted pursuant to the provisions of this chapter are considered individual proceedings and are governed by the requirements for such proceedings set out in the Oklahoma Administrative Procedures Act, Title 75 O.S. §309 through §323.

380:30-1-5. Payment of accrued leave

For the purpose of clarification of § 165.1 (4) of Title 40 O.S., specifically, when accrued vacation pay, sick pay, severance pay or other similar advantages are payable as a wage upon termination of employment:

- (1) Vacation pay, sick pay, severance pay or other similar advantage is considered "wages" only if the payment of such is:
 - (A) Agreed upon between the employer and the employee; or
 - (B) It is provided by the employer to his employees in an established policy.
- (2) The Department will accept and process accrued leave claims only if:
 - (A) The claims arise by virtue of express language in a written employment contract or policy manual which provides for the payment of cash in lieu of time-off; or
 - (B) The claims arise by virtue of an "established policy" based upon a promise by the employer, either express or implied, and supported by a prior course of conduct by the employer where payment of cash in lieu of time-off was actually made to previous employees.

- (3) If payment of cash in lieu of time-off is provided in a written employment contract or policy manual, the employee must meet all conditions precedent set out in the contract or the manual before entitlement to payment to accrued leave vests in that employee.
- (4) The Department shall reject any claim if the written contract or policy manual or an established policy does not provide for the payment of cash in lieu of time-off or if the claimant has failed to meet all conditions precedent required for such payment.

380:30-1-6. Bonuses

- (a) A provision in a written employment contract or policy manual which requires the employee to be employed at the time the bonus is paid, is valid. Employees terminated, voluntarily or involuntarily, prior to the bonus payment date are not entitled to receive the bonus payment.
- (b) If there is no such provision requiring that the employee be employed at the time the bonus is paid and (i) the employer has declared its intention to pay a bonus and (ii) the amount of the bonus has been made definite prior to payment, then the employee is entitled to receive the bonus even if involuntarily terminated prior to payment. In such a case, the bonus will be deemed earned and due and will be part of wages due the terminated employee.

380:30-1-7. Work without pay and deductions

- (a) No employer shall require or permit an employee, as a condition of securing or retaining employment, to work without monetary compensation.
- (b) The term "deductions," as used in 40 O.S. § 165.1 et seq., is defined as any and all sum(s) of money withheld by the employer from an employee's wages. The scope of the term includes, but is not limited to, amounts withheld for FICA, Federal and State income tax, Medicare, and garnishments.
- (c) No employer shall deduct any amount from an employee's wages, unless legislation or a court order mandates such, or unless such deduction is made pursuant to the provisions of this section.
- (d) It is permissible for an employer and employee to voluntarily enter into a payroll deduction agreement, including deductions for the following purposes:
 - (1) To allow the employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment, or to allow for recovery of payroll overpayment as provided in this subchapter;
 - (2) To compensate the employer for the value of the employer's merchandise or uniforms purchased by the employee;

- (3) To provide payment for medical, accident, disability, or retirement benefits, or insurance premiums, not including workers' compensation or unemployment;
 - (4) To provide for contributions to a deferred compensation plan or other investment plan provided by the employer as a benefit to the employee;
 - (5) To compensate the employer for breakage or loss of merchandise, inventory shortage, or cash shortage caused by the employee; where the employee was the sole party responsible for the cash or items damaged or lost, at the time the damage or loss occurred.
- (e) Any payroll deduction agreement made pursuant to subsection (d) must be in writing, and signed by the employee before any deduction authorized by such agreement is taken. For purposes of these rules, the words "loan" and "advance" mean a transfer of money with a provision for repayment.
- (f) Pursuant to the authority granted in 40 O.S. § 1 and § 165.7, the Commissioner shall have the authority to investigate, hold hearings, subpoena witnesses, administer oaths, take testimony, and/or order production of any document or financial statement in relation to any violation of this rule. The Commissioner may issue Cease and Desist Orders to compel compliance with this rule.

380:30-1-8. Regular wages, overtime and benefits

- (a) Regular wages are those payments that an employee receives for services rendered in the regular course and scope of employment. They must be paid either semi-monthly or monthly, according to 40 O.S. § 165.2. Payment must be made for all time worked, and may not be conditioned on job performance.
- (b) Payment of premium overtime due to requirements of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, is a matter of Federal law. The Department adopts the regulations of the U.S. Department of Labor as published in the Code of Federal Regulations, and the Interpretive Bulletins relating thereto, in determining compliance issues on such claims.
- (c) Payment of overtime premiums pursuant to the terms of an employment agreement is considered part of regular wages for purposes of these rules.
- (d) Benefits are special wages that are paid at certain times under certain conditions, according to the terms of the employment agreement. These include vacation, sick pay, paid holidays, severance, bonuses, and other similar advantages; provided, benefits do not include mileage reimbursement, travel expenses, "sweat equity", or stock options as defined elsewhere in this Subchapter. Entitlement to

benefits and/or the receipt thereof may be found upon proof of an established policy, or pursuant to the terms of a written agreement, and may be conditioned upon a certain level of job performance or any other criteria not otherwise unlawful.

- (e) Any restrictions, criteria or conditions on benefits, including employer discretion and any limits thereon, must be contained in a written policy signed by the employee or they will not be held valid. The employer will be held to the terms of the benefit arrangement, and once the employee meets the criteria set forth therein, the benefit becomes part of wages earned and due and is thereupon payable as provided by statute in 40 O.S. § 165.1 et seq.

380:30-1-9. Stock options and ownership interest as wages

- (a) An option to purchase stock in lieu of wages is enforceable as wages if provided in a written agreement signed by the employer and employee, and only if the purchase is required by the employer. If the option to purchase is entirely the employee's decision, the option is not considered wages as defined in this chapter. If the employee may elect to receive wages or benefits instead of stock, the value of the stock is considered to be wages as defined in this chapter, once the employee has made the election to receive same.
- (b) For non-corporate employers, an option to receive percentage ownership interest shall be treated the same as an option to purchase stock.
- (c) If the percentage ownership interest is the claimant's only source of compensation for services rendered, the claimant shall be considered a business owner.

380:30-1-10. Mileage reimbursement and expenses

To the extent that mileage and expense amounts are paid as reimbursement for money expended by the employee, in the course and scope of employment, they are not considered to be wages. Any amount agreed upon, which is over and above that actually expended by the employee, and which results in taxable income to the employee, is considered part of regular wages and is enforceable as such. This includes "vehicle allowances" and other types of flat-rate expense payments.

380:30-1-11. Overpayment of wages

- (a) If an employer determines that an employee has been overpaid, the employer may recover the overpaid sum from the employee in one of two ways:
 - (1) Lump sum cash repayment; or
 - (2) Agreement for payroll deduction in a lump sum or in installments over a term not to exceed the length of the term in which the erroneous payments were made, provided that such agreement

is made pursuant to the provisions of this subchapter regarding deductions.

- (b) The election as to which method is used, and the terms thereof, shall be made by the employee in writing, and shall be subject to all other provisions of law and which may apply. The employee may elect to use a combination of the above two methods, if the employer agrees.
- (c) Upon termination of the employment agreement, any remaining balance of overpayment shall be considered an offset to any final wages otherwise due the employee.

380:30-1-12. Payment for training required by employer

- (a) If an employer requires an employee to undergo training and/or attend classes prior to employment or concurrent with job duties, and such training is provided by the employer or is held at the place of employment, the employer cannot charge the employee for the cost of the training, and must also pay the employee at least the current minimum wage for all hours of training required.
- (b) If the employer contracts with a third party to provide training away from the workplace, or requires the employee to obtain outside training, the employer is not required to pay wages for the employee's attendance, although the employer may elect to do so. The party whom the training benefits shall bear the cost thereof, as follows:
 - (1) If the training is specific or proprietary to the current employer, and is not required by a third party for the employee to work in that particular occupation, then the training is considered to benefit the employer and the employer shall bear the cost thereof.
 - (2) If completion of the training will result in procurement or renewal of a professional license or certification for the employee, which stays with the employee and is portable to other employers in the same field or business, then the training is considered to benefit the employee, and the employee shall bear the cost thereof; provided, the employer may choose to pay for the training if the employer so desires.
- (c) This section shall not apply to any apprenticeship program that is registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training.

380:30-1-13. Written notice

"Written notice" for purposes of meeting the requirements of 40 O.S. 165.4 does not include notices printed on a paycheck or paystub but shall be a separate notice conceding that either:

- (1) no further wages are due; or
- (2) a specified sum is due.

380:30-1-14. Attorneys fees and costs

Upon a finding of violation of any provision found within OAC 380:30-1-1, *et seq.*, the employer shall be additionally liable to the employee for attorney fees, costs, and any other remedy provided in 40 O.S. § 165.1, *et seq.*

SUBCHAPTER 3. WAGE CLAIM PROCEDURES

380:30-3-1. Jurisdiction of the Department generally

- (a) The Department will accept for filing a claim for wages against any employer employing any employee in this state. In all cases, the employee or person making the claim shall be called the "Claimant", and the employer shall be called the "Respondent".
- (b) There are generally three types of claims to which these procedures apply:
 - (1) Claims for wages earned and due or provided by an established policy, whether during the course of employment or upon termination, as provided by 40 O.S. §§ 165.1–165.3;
 - (2) Claims for payment of wages to survivors, pursuant to 40 O.S. § 165.3a;
 - (3) Claims under the Minimum Wage Act, 40 O.S. § 197.1 *et seq.*

380:30-3-2. Employee wage claim form

- (a) An employee, or the survivor of an employee, who has not been paid wages due may file a claim on a form provided by the Department. The Department shall keep a record of each claim filed and the disposition of the claim.
- (b) The wage claim form shall request information regarding the dates the work was performed, the rate of pay, the reasons the wages have not been paid in full and the amount of money due, the full name of the claimant, the full name of the employee if the claimant is the survivor of the employee, the street address of the claimant, the telephone number for the claimant, if any, the physical location where the work was performed, the name of the immediate supervisor of the employee, the name of the employer, the address of the employer, and any information regarding bonuses, sick leave, annual leave or other advantages due the claimant. The claimant shall provide evidence in support of the claim within the claimant's possession, including time cards, personal time records, payroll check stubs, W-2 statements, written wage agreements, statements from witnesses who have direct knowledge regarding the hours worked and the wage agreement, and all other documents which substantiate the employment relationship.
- (c) The Department shall notify the respondent of the filed claim.

380:30-3-3. Employer response form

- (a) If the respondent agrees the amount claimed is due, the respondent shall issue a check to the claimant and send it to the Department. Subject to collection of funds payable by check, this action closes the claim and the wages are forwarded to the claimant. If the respondent agrees that a portion of the amount claimed is due, that amount should be paid immediately as provided in this subsection. If all or part of the claimed wages are disputed by the respondent, the respondent must complete an Employer Response Form, which will be provided by the Department, and return the response form to the Department.
- (b) The Employer Response Form shall request such information as the type of business entity of the respondent, the names and operators of the business, employment dates of the claimant, or the employee for which the survivor is making the claim, the rate of pay for the claimant, copies of any withholding statement for the claimant for the time period for which the claim is made and for the immediately prior pay period of the claimant, copies of any time cards or records for the time period for which the claim is made and for the immediately prior pay period, copies of any written employment policies or agreements and the respondent's reasons for not paying the wages alleged to be due by the claimant. The Department may issue subpoenas to require the employer to appear and/or to submit further written information or documentation, require the claimant to submit further written information or documentation. The Department may conduct an informal proceeding to resolve the claim prior to the issuance of the Order of Determination as provided in rule 380:30-3-3.1.
- (c) Upon failure by the respondent to complete and return the Employer Response Form within fifteen (15) days from notice thereof, the Department may make a determination based upon the facts in evidence and documents on file regarding the issuance of the Order of Determination as provided in rule 380:30-3-3.1.
- (d) Every employer subject to Title 40 of the Oklahoma Statutes or any order issued pursuant to Title 40 of the Oklahoma Statutes shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for the entire length of employment for all persons currently employed and no less than five (5) years from the end of employment for all former employees.

380:30-3-3.1. Orders of Determination and Notices of Dismissal

- (a) The Department shall issue an Order of Determination pursuant 40 O.S. § 165.7 requiring the respondent to pay the claimant the wages due and unpaid, or liquidated damages, if any, or both, upon

investigation of the facts contained in the complaint, the documents provided by the claimant, and the documents provided by the respondent, and upon determination of the facts necessary to prove the following:

- (1) Proof of notice of the claim to the respondent.
 - (2) The existence of an employer-employee relationship between the claimant/employee and the respondent.
 - (3) Date and time of employment of the claimant/employee, for the respondent.
 - (4) Non-payment of wages due the claimant, for the date and time of employment proved in subparagraph (3).
 - (5) Failure to pay wages due the claimant by the respondent for the period of time, as required by law, for assessment of liquidated damages against the respondent.
- (b) The Department shall dismiss the claim upon determination that the agency lacks jurisdiction over the claim, that the claim is unjustified according to statute or rules, that the evidence obtained during the investigation is insufficient to support the claim, or that the agency is unable to obtain proper notice of the claim upon the respondent.
- (c) The Department shall deliver the Order of Determination or Notice of the dismissal of the claim to the claimant at the last address provided in writing to the Department, and to the respondent at the address to which notice of the claim was delivered, or at the service address for respondent as shown on the records of the Secretary of State of the State of Oklahoma, or the last address provided in writing by the respondent to the Department. The Order of Determination shall be sent by certified U.S. mail, return receipt requested. The Notice of Dismissal shall be sent by First Class U.S. Mail.

380:30-3-3.2. Request for hearing

- (a) Within twenty (20) calendar days after receiving the Order of Determination, if the respondent disputes any or all of the Order, the respondent may request a hearing before the Commissioner. The request for a hearing shall be in writing, specify the style and case number for the claim, and be signed by the party requesting the hearing or a representative of the party. The request shall be directed to the Legal Division of the Department.
- (b) The Department's decision to dismiss or refuse to accept a claim shall not be subject to administrative hearing or review.

380:30-3-4. Procedures prior to hearing

- (a) Upon receipt of a request for a hearing after issuance of an Order of Determination, the claim shall be transferred to the Legal Division of the Department, which shall set a date and time for the hearing and notify the parties as required by law, or as instructed by the parties.

The parties may file whatever motions, pleadings, briefs, or other papers they deem appropriate, including but not limited to motions to dismiss and motions for summary judgment. Dispositive motions may be ruled upon either at hearing or prior thereto, with or without benefit of oral argument, by the Commissioner. Unless good cause is shown, motions and briefs shall be filed at least thirty (30) days prior to the hearing of the Claim; shall be served upon the opposing party, counsel, and the Department in a timely manner; and shall not exceed 25 pages in length, exclusive of exhibits or attachments. Any response to a motion or brief shall be filed within fifteen (15) days thereafter, unless good cause is shown. All pleadings and papers shall be styled in the following manner: "BEFORE THE DEPARTMENT OF LABOR, STATE OF OKLAHOMA, IN RE: (Respondent), Claim No., (Name of Claimant)."

- (b) Subpoenas will be issued by the Commissioner upon request of either party. The party requesting the subpoena shall be responsible for service in a timely manner, in accordance with the Administrative Procedures Act, 75 O.S. § 315, and the Oklahoma Pleading Code, 12 O.S. § 2004.1. All subpoenas issued by the Department shall allow at least ten (10) days for compliance. Subpoenas duces tecum shall set the date of compliance either at or before the pre-hearing conference, if any. Otherwise, the date for compliance shall be at least ten (10) days prior to the hearing.
- (c) Subject to the provisions of the Administrative Procedures Act, parties may obtain discovery in any manner provided for under the Oklahoma Discovery Code, 12 O.S. § 3225 et seq., and in accordance with the rules and provisions contained therein. Discovery shall be completed no later than the pre-hearing conference.
- (d) The Commissioner reserves the authority to dismiss a claim set for hearing at any time for lack of jurisdiction over the parties or subject matter of the claim.
- (e) Unless for good cause shown, no request for continuance of any hearing shall be considered unless the same is presented in writing to the Commissioner at least three (3) days prior to the scheduled docket date. Continued cases shall be placed on the next available hearing docket, but no earlier than 30 days after the original scheduled date without written consent of both parties. No case shall be continued more than twice unless good cause is shown.

380:30-3-5. Motions for stay of proceedings

The Commissioner may grant a stay of the proceeding upon motion of either party, or upon the Commissioner's own motion, if the outcome of a case currently pending in any court of record in this State would affect the rights of the parties or the result in a pending Wage Claim filed with the Department. Either party may move to stay the proceedings at any time

after the filing of the affected Wage Claim. Any response to a motion for stay of proceedings shall be filed within twenty (20) days thereafter. The moving party shall have the burden of proof.

380:30-3-6. Burdens of proof

- (a) The Commissioner (or the Commissioner's designee sitting as an Administrative Law Judge) shall conduct wage claim hearings which shall be informal, with the object of dispensing speedy justice between the parties to assure a full and complete hearing on the merits.
- (b) The Department is entitled (by this rule which has the force and effect of law) to participate in all hearings.
- (c) Department's counsel, in defense of the earlier issued Order of Determination, shall proceed first at the hearing; thereafter, the Claimant may adduce additional evidence.
- (d) At the conclusion of the presentation of evidence by Department's counsel and Claimant, the Commissioner (or the Commissioner's designee sitting as an Administrative Law Judge) may entertain a motion for judgment or dismissal (i.e., the equitable equivalent of a demurrer to the evidence) on the grounds that Department's counsel or Claimant, or both, have failed to meet the primary burden of proof in the wage claim hearing.
- (e) The Department's right to appear and defend the Order of Determination is absolute; however, Department's counsel may waive appearance at the hearing solely at the discretion of Department's counsel. An election by the Department to waive appearance at the hearing does not preclude the Department's involvement in future litigation or any 75 O.S. 317, 318, or 319-323 proceedings.
- (f) The Respondent shall have the burden of proof for all affirmative defenses to the claim. Any legal offset by the Respondent, as defined herein, shall be treated as an affirmative defense to the claim.
- (g) The Claimant and the Respondent shall have the right to offer evidence in their behalf in accordance with Oklahoma Administrative Code 380:30-3-8 and the Commissioner (or Commissioner's designee sitting as an Administrative Law Judge) may call and question such witnesses and order the production of and admit into evidence such documents as deemed appropriate in the discretion of the Commissioner (or Commissioner's designee sitting as an Administrative Law Judge).

380:30-3-7. Mediation [REVOKED]

380:30-3-8. Pre-hearing conferences

- (a) The Commissioner, upon motion of either party or upon the Commissioner's own motion, may order a pre-hearing conference prior to hearing. Such conference will be held at least ten (10) days in

advance of the scheduled hearing date, and the parties shall be notified at least ten (10) days prior to the conference of the time, place, and date thereof.

- (b) When a pre-hearing conference is ordered, parties and/or their counsel shall appear and exchange the following:
 - (1) A brief statement of the case, list of stipulations, and requested remedy;
 - (2) A list of all witnesses who have direct knowledge of the facts surrounding the issues of the Claim and who are expected to be called at the hearing;
 - (3) A list of all documents and exhibits, and the original or a copy of each document or exhibit, to be offered into evidence at the hearing;
 - (4) A list of all witnesses for whom a subpoena is required. The list shall include the name and address of each witness, and a brief statement of testimony to be offered by that witness. The Department will not issue subpoenas without this information.
- (c) The parties shall provide two copies to the Department of all documents submitted, in addition to those exchanged between them. Unless good cause is shown, no witnesses, documents or other evidence will be admitted at hearing unless the same have been submitted at the pre-hearing conference.
- (d) Failure to appear at the pre-hearing conference may result in dismissal, default judgment, or other sanction unless good cause is shown.
- (e) The parties shall complete their discovery, if any, no later than the date of the pre-hearing conference. All motions and briefs shall be filed in accordance with the deadlines set forth in OAC 380:30-3-4.

SUBCHAPTER 5. ADMINISTRATIVE HEARING PROCEDURES

380:30-5-1. Administrative hearing

The Department shall set claims for administrative hearing upon request as provided in rule 380:30-3-3.2. This is a legal proceeding subject to the requirements for individual proceeding pursuant to the Oklahoma Administrative Procedures Act, Title 75 O.S. §309 et seq., the provisions of which are incorporated herein by reference. Both the claimant and respondent will be provided with notice of the hearing. At the hearing, each party will be required to present evidence. The hearing will be conducted, and the final agency order issued, by the Commissioner or the Commissioner's designee sitting as Administrative Law Judge.

380:30-5-2. Contents and service of notice

The Notice of Hearing shall meet the requirement of 75 O.S. § 309. The Order of Determination previously sent to the respondent, shall serve as a detailed statement of the issues involved. The Department shall deliver Notice of Hearing to the claimant at the last address provided in writing to the Department and to the respondent at the address to which notice of the claim was delivered, or at the service address for respondent as shown on the records of the Secretary of State of the State of Oklahoma, or the last address provided in writing by the respondent to the Department. The Notice of Hearing shall be sent by certified U.S. mail, return receipt requested. Failure of service of the Notice of Hearing upon the claimant shall result in dismissal of the earlier issued Order of Determination and closure of the case; failure of service upon the respondent shall result in dismissal of Respondent's challenge to the earlier issued Order of Determination.

380:30-5-3. Opportunity to be heard [REVOKED]

380:30-5-4. Record of hearing [REVOKED]

380:30-5-5. Hearing to be recorded [REVOKED]

380:30-5-6. Procedures before the Department

The hearing shall be conducted pursuant to the provisions of 75 O.S. §§ 309 and 310.

380:30-5-7. Final orders

A final agency order shall be issued by the Commissioner pursuant to the provisions of 75 O.S. § 312.

380:30-5-8. Subpoenas-witnesses and documents [REVOKED]

380:30-5-9. Rehearing, reopening or reconsideration of decision

A final order issued by the Commissioner shall be subject to rehearing, reopening, or reconsideration pursuant to the provision of 75 O.S. § 317.

380:30-5-10. Judicial review

Any party aggrieved by a final order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of Title 75 O.S. §318, through 323 of the Oklahoma Administrative Procedures Act.

380:30-5-11. Staying enforcement of agency decision pending review

Upon motion of either party, after filing of a proceeding for review with the district court, the Commissioner may stay the enforcement of the agency decision for good cause shown or when the interest of justice requires.

380:30-5-12. Transmission of record to reviewing court

Upon receipt by the Department of a copy of the petition for review stamped "filed" by the district court clerk, the Department shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review pursuant to the provisions of 75 O.S. § 320. The Department shall notify the parties and counsel of record when the record has been completed and transmitted.