

641—173.14(17A,135) Subpoenas.**173.14(1) Investigatory subpoenas.**

a. The department may subpoena books, papers, records, and other real evidence which is necessary for the department to decide whether to institute a contested case proceeding. Each subpoena shall contain:

- (1) The name and address of the person to whom the subpoena is directed;
- (2) A description of the books, papers, records or other real evidence requested;
- (3) The date, time and location for production, or inspection and copying;
- (4) The time within which a motion to quash or modify the subpoena must be filed;
- (5) The signature, address and telephone number of the division director or designee;
- (6) The date of issuance;
- (7) A return of service.

b. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the department a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

c. Upon receipt of a timely motion to quash or modify a subpoena, the department may request an administrative law judge to issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

d. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the department by serving on the department director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

e. If the person contesting the subpoena is not the person under investigation, the department's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the department's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the case.

173.14(2) Issuance of subpoenas in a contested case.

a. Subpoenas issued in a contested case may compel the attendance of witnesses at a deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at a deposition or hearing, or may be issued separately. Subpoenas shall be issued by the department upon written request. In the absence of good cause, a request for a subpoena must be received at least three days before the scheduled hearing.

b. A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- (1) The name, address and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena shall be directed;
- (3) The date, time and location at which the person shall be commanded to attend and give testimony;
- (4) Whether the testimony is requested in connection with a deposition or hearing;
- (5) A description of the books, papers, records or other real evidence requested;
- (6) The date, time and location for production, or inspection and copying.

c. Each subpoena shall contain, as applicable:

- (1) The caption of the case;
- (2) The name, address and telephone number of the person who requested the subpoena;
- (3) The name and address of the person to whom the subpoena is directed;
- (4) The date, time and location at which the person is commanded to appear;
- (5) Whether the testimony is commanded in connection with a deposition or hearing;

(6) A description of the books, papers, records or other real evidence the person is commanded to produce;

(7) The date, time and location for production, or inspection and copying;

(8) The time within which a motion to quash or modify the subpoena must be filed;

(9) The signature, address and telephone number of the division director or designee;

(10) The date of issuance;

(11) A return of service.

d. Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the division director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the department a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

f. Upon receipt of a timely motion to quash or modify a subpoena, the department may request an administrative law judge to issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

g. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the department by serving on the department director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.