

875—5.20(88) Hearings.

5.20(1) *Order of proceeding.* Except as may be ordered otherwise by the hearing examiner, the party applicant for relief shall proceed first at a hearing.

5.20(2) *Burden of proof.* The party applicant shall have the burden of proof.

5.20(3) *Evidence.*

a. Admissibility. A party shall be entitled to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a hearing examiner shall exclude evidence which is irrelevant, immaterial or unduly repetitious.

b. Testimony of witnesses. The testimony of a witness shall be upon an oath or affirmation administered.

c. Objections. If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, the party shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in a proceeding.

d. Proof for a special variance. Before a special variance may be granted, there must be proof that an actual conflict does exist. The proof required to establish such conflict is information in writing or oral testimony from a representative of the involved federal regulatory agency or agencies, substantiated by evidence, that there is a conflict between the standards, rules or regulations of the federal agency and those of the division of labor services. Also, the applicant must prove that compliance with the standard, rule or regulation of the division of labor services would subject the applicant to probable citation, penalty, or prosecution for violating such federal agency standard, rule or regulation.

5.20(4) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the division of labor services by reason of its functions is presumed to be expert provided that the parties shall be given adequate notice, at the hearing or by reference in the hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

5.20(5) *Transcript.* Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.