

875—5.21(88) Decisions of hearing examiner.

5.21(1) *Proposed findings of fact, conclusions and rules or orders.* Within ten days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with supporting briefs shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

5.21(2) *Decision.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the hearing examiner shall issue a decision which shall be reviewed and countersigned by the commissioner. The commissioner shall serve the decision upon each party, and the decision shall become final upon the twentieth day after service thereof. The decision shall include: (1) a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and (2) the appropriate rule, order, relief or denial thereof. The decision shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. The decision shall be made on the basis of a preponderance of reliable and probative evidence.

5.21(3) *Grant of a special variance.* The grant of a special variance shall be renewable upon review by the labor commissioner at six-month intervals beginning on the date the decision becomes final under 5.21(2). If at the time of the review the labor commissioner finds that there has been a change in the standard, rule, or regulation or a change in the interpretation of such standard, rule or regulation of the federal agency or the division of labor services affecting or resolving the conflict on which the special variance was granted, the labor commissioner shall set the case for an evidentiary hearing in accordance with 5.14(88) to 5.21(88). Enforcement shall be stayed during review and hearing procedures under this rule.

Affected employees shall be notified by their employer of a renewal or a refusal to renew by: (1) giving a copy of the labor commissioner's notice to the authorized employee representative; (2) posting a copy of the commissioner's notice at the place or places where notices to employees are normally posted; and (3) other appropriate means.