

**875—1.104(17A,91) Review.** Each petition for a waiver or variance shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. Discretion to grant or deny a waiver or variance petition rests with the labor commissioner or the labor commissioner's designee. The burden of persuasion shall be upon the petitioner. The division may request additional information relating to the requested waiver or variance from the petitioner and may conduct any necessary and appropriate investigation.

**1.104(1)** A waiver or variance may be granted if the division finds all of the following based on clear and convincing evidence:

*a.* Application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested;

*b.* The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law;

*c.* Waiver or variance of the rule in the specific circumstances would not prejudice the substantial legal rights of any person or cause a denial of federal funds; and

*d.* Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

**1.104(2)** Petitioners requesting permanent waivers or variances must also show that a temporary waiver or variance would be impracticable.