

## CHAPTER 5215

### DEPARTMENT OF LABOR AND INDUSTRY

### OCCUPATIONAL SAFETY AND HEALTH REVIEW

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#### 5215.0100 SCOPE OF RULES.

This chapter governs all proceedings before the Occupational Safety and Health Review Board.

In the absence of a specific provision, procedures and standards of review shall be in accordance with chapter 1400 and the Administrative Procedure Act, Minnesota Statutes, chapter 14.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 20 SR 2428*

#### 5215.0200 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Act.** “Act” means the Occupational Safety and Health Act of 1973, Minnesota Statutes, chapter 182.

Subp. 3. [Repealed, 20 SR 2428]

Subp. 4. [Repealed, 20 SR 2428]

Subp. 5. **Chair.** “Chair” means the chair of the Occupational Safety and Health Review Board as designated by the governor.

Subp. 6. **Citation.** “Citation” means a written communication issued by the commissioner to an employer pursuant to Minnesota Statutes, section 182.66.

Subp. 7. [Repealed, 20 SR 2428]

Subp. 8. **Day.** “Day” means a calendar day.

Subp. 9. **Executive secretary.** “Executive secretary” means the executive secretary of the Occupational Safety and Health Review Board.

Subp. 10. **Administrative law judge.** “Administrative law judge” means a person assigned to hear a contested case by the Office of Administrative Hearings.

Subp. 11. **Intervenor.** “Intervenor” means any person whose petition to intervene has been granted by the administrative law judge pursuant to part 1400.6200.

Subp. 12. **Notification of proposed penalty.** “Notification of proposed penalty” means a written communication issued by the commissioner to an employer pursuant to Minnesota Statutes, section 182.661, subdivision 1 or 2.

Subp. 13. **Party.** “Party” means each person named as a party in the notice of and order for hearing, and persons granted party status by the commissioner.

Subp. 14. [Repealed, 20 SR 2428]

Subp. 15. **Proceeding.** “Proceeding” means any case before the board on appeal from the decision of an administrative law judge.

Subp. 16. **Representative.** “Representative” means any person, including an authorized employee representative and legal counsel, authorized by a party or intervenor to represent that person in a proceeding.

Subp. 17. **Working day.** “Working day” means all days except Saturdays, Sundays, or holidays as defined in Minnesota Statutes, section 645.44.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 17 SR 1279; 20 SR 2428*

**5215.0300** [Repealed by amendment, 8 SR 1482]

**5215.0400** [Repealed by amendment, 8 SR 1482]

### **5215.0500 EXTENSIONS OF TIME.**

Requests for extensions of time for the filing of any pleading or document must be in writing and must be received by the board by 4:30 p.m. on the fourth working day in advance of the date on which the pleading or document is due to be filed and be accompanied by an affidavit or affidavits explaining the need for an extension.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 20 SR 2428*

## **SERVICE AND NOTICE; OTHER PREHEARING PROCEDURES**

### **5215.0600 RECORD ADDRESS.**

The initial document filed with the board by a party or intervenor must contain the party or intervenor’s name, address, and telephone number. Any change in the party or intervenor’s name, address, or telephone number must be communicated promptly in writing to the board, all parties, and intervenors. A party or intervenor who fails to furnish the information required by this part waives the right to notice and service under this chapter.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 17 SR 1279; 20 SR 2428*

### **5215.0700 FILING; SERVICE AND NOTICE.**

Subpart 1. **Service.** At the time of filing any document with the board, the party or intervenor filing the document must serve a signed copy of the document on every party and intervenor.

Subp. 2. **Representatives.** Service upon a party or intervenor who has appeared through a representative must be made upon the representative only.

Subp. 3. **Methods of service.** Unless otherwise ordered by the board, service may be made by postage-prepaid first class mail or personal delivery. Service is completed at the time of mailing or personal delivery.

Subp. 4. **Proof of service.** Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and must be filed with the document.

Subp. 5. [Repealed, 20 SR 2428]

Subp. 6. [Repealed, 20 SR 2428]

Subp. 7. [Repealed, 20 SR 2428]

Subp. 8. **Filing.** Documents filed with the board must be accomplished by postage-prepaid first class mail or personal delivery upon the executive secretary. Filing accomplished by postage-prepaid first class mail is considered filed on the postmark date.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 13 SR 2552; 20 SR 2428*

**5215.0710** [Repealed, 13 SR 2552]

**5215.0711** [Repealed, 20 SR 2428]

**5215.0720** [Repealed, 13 SR 2552]

**5215.0721** [Repealed, 20 SR 2428]

**5215.0730** [Repealed, 20 SR 2428]

**5215.0740** [Renumbered 5215.0700, subp. 7]

**5215.0750** [Repealed, 13 SR 2552]

**5215.0800** [Repealed, 20 SR 2428]

**5215.0900 CONSOLIDATION.**

Cases may be consolidated on the motion of any party or on the board's own motion where there exist common parties or intervenors, or common questions of law or fact, or both.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 20 SR 2428*

**5215.1000 SEVERANCE.**

Upon its own motion or the motion of any party, the board may order any proceeding severed with respect to some or all issues or parties when severance is necessary to protect the legal interests of one or more parties or intervenors.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 20 SR 2428*

**5215.1100 PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.**

Upon application by any person, the board may issue orders to protect the confidentiality of information that may be presented in a proceeding before it.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 20 SR 2428*

**5215.1200** [Repealed, 20 SR 2428]

**5215.1300** [Repealed by amendment, 8 SR 1482]

**PARTIES AND REPRESENTATIVES**

**5215.1400 REPRESENTATIVES OF PARTIES AND INTERVENORS.**

Any party or intervenor may appear in person or through a representative.

Nothing contained herein requires any representative to be an attorney at law unless otherwise prohibited as the unauthorized practice of law.

Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal with the board and by serving a copy on all parties and intervenors.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 20 SR 2428*

## PLEADINGS AND MOTIONS

**5215.1500 FORM OF PLEADINGS; CAPTION.**

Subpart 1. **Form.** All documents filed with the board must contain a caption sufficient to identify the parties in accordance with subpart 2. The caption must include the commissioner's and the office of administrative hearings' docket number, if any.

Documents, other than exhibits, must be typewritten or otherwise legible, double spaced with one-inch margins on white paper, 8-1/2 inches by 11 inches.

Subp. 2. **Caption.** Cases before the board must be captioned:

Commissioner  
Department of Labor and Industry  
State of Minnesota

Complainant

v.

(Name of contesting party)

Respondent

(Name of third party)

Authorized  
employee  
representative,  
affected  
employee,  
employer, etc.

Subp. 3. **Placement of caption, docket numbers.** The caption must appear at the left upper portion of the initial page of any document, other than exhibits, filed with the board.

The initial page of any document, other than exhibits, must set out at the upper right portion of the page, opposite the caption, the commissioner's and the office of administrative hearings docket numbers, if any.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 20 SR 2428*

**5215.1600 SIGNATURE ON PLEADINGS.**

Documents filed with the board must be signed by the party or intervenor filing the document or the party's or intervenor's representative. Signing constitutes a representation by the signer that the signer has read the document or pleading, that to the best of the signer's knowledge, information, and belief the statements made in it are true, and that it is not interposed for purposes of delay or harassment.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 17 SR 1279; 20 SR 2428*

**5215.1700** [Repealed, 20 SR 2428]

**5215.1800** [Repealed, 20 SR 2428]

**5215.1900** [Repealed, 20 SR 2428]

**5215.2000** [Repealed, 20 SR 2428]

**5215.2100 PETITIONS FOR MODIFICATION OF ABATEMENT DATE.**

When a petition for modification of abatement date filed under part 5210.0542 is objected to by the commissioner, affected employees, or an authorized employee representative, the petition must be processed as follows:

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A. The petition, citation, and objections received by the Department of Labor and Industry must be forwarded to the board within three days after the expiration of the 15-day period set out in part 5210.0542, subpart 7.

B. The board shall docket and process the petition in the same manner as any other contested case, except that all hearings on the petitions must be handled on an expedited basis.

C. An employer petitioning for a modification of abatement date has the burden of proving that the employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

D. Within ten days after receiving notice of the docketing by the board of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 17 SR 1279; 20 SR 2428*

**5215.2200** [Repealed, 20 SR 2428]

**5215.2300** [Repealed, 20 SR 2428]

**5215.2400** [Repealed, 20 SR 2428]

**5215.2500** [Repealed, 20 SR 2428]

**5215.2530** [Repealed, 13 SR 2552]

**5215.2560** [Repealed, 20 SR 2428]

**5215.2600** [Repealed, 8 SR 1482]

**5215.2700** [Repealed, 8 SR 1482]

**5215.2800** [Repealed, 8 SR 1482]

**5215.2900** [Repealed, 8 SR 1482]

**5215.3000** [Repealed, 8 SR 1482]

**5215.3100** [Repealed, 8 SR 1482]

**5215.3200** [Repealed, 8 SR 1482]

**5215.3300** [Repealed, 8 SR 1482]

**5215.3400** [Repealed, 8 SR 1482]

**5215.3500** [Repealed, 8 SR 1482]

**5215.3600** [Repealed, 8 SR 1482]

**5215.3700** [Repealed, 8 SR 1482]

**5215.3800** [Repealed, 8 SR 1482]

**5215.3900** [Repealed, 8 SR 1482]

**5215.4000** [Repealed, 8 SR 1482]

**5215.4100** [Repealed, 8 SR 1482]

**5215.4200** [Repealed, 8 SR 1482]

5215.4300 [Repealed, 8 SR 1482]

5215.4400 [Repealed, 8 SR 1482]

5215.4500 [Repealed, 8 SR 1482]

5215.4600 [Repealed, 8 SR 1482]

5215.4700 [Repealed, 8 SR 1482]

5215.4800 [Repealed, 8 SR 1482]

5215.4900 [Repealed, 20 SR 2428]

## POSTHEARING PROCEDURES

### 5215.5000 NOTICE OF APPEAL.

Subpart 1. **Appellant.** Any party or intervenor may file a notice of appeal of the decision of the administrative law judge with the board.

Subp. 2. **Contents.** A notice of appeal must contain a concise statement of the decision or order which is sought to be reviewed and the errors which the appellant claims. The notice of appeal must also state the name of the administrative law judge who presided over the administrative hearing, any statutes or rules at issue, the claims, defenses, and issues litigated and the result below, and the issues to be raised on appeal. The decision of the administrative law judge must be attached to the notice of appeal. The original notice of appeal and five copies must be filed with the board.

Subp. 3. **Receipt.** The decisions and orders of the administrative law judge may be appealed to the board by any party within 30 days following service by mail of the administrative law judge's decision and order.

Subp. 4. **Other parties may file.** Within ten days after service of the notice of appeal, any other party may file a notice of appeal regardless of the 30-day period in subpart 3.

Subp. 5. [Repealed, 20 SR 2428]

Subp. 6. **Filing and service.** Filing and service of the notice of appeal must be made according to part 5215.0700.

Subp. 7. **Transcript.** If a transcript has not already been ordered, the appellant must, within ten days after filing the notice of appeal, order a copy of the transcript at the appellant's own expense.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** 8 SR 1482; L 1984 c 640 s 32; 20 SR 2428

### 5215.5050 BRIEFS.

Subpart 1. **Form of brief.** Parties must file briefs. Each brief must state the facts relevant to the issues appealed, making citation to the transcript, concisely identify the legal issue or issues, contain an argument explaining the party's position on each issue, and a conclusion which states the relief sought by the party. Filing and service of the brief must be made according to part 5215.0700.

Subp. 2. **Briefing schedule.** The board shall set a briefing schedule. The appellant shall file a brief within 30 days after filing of the first notice of appeal or receipt of the transcript by the board, whichever is later. All other parties and intervenors shall file briefs within 30 days of service of the appellants' briefs. Appellants may file reply briefs within ten days of service of the respondents' briefs.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** 8 SR 1482; 20 SR 2428

**5215.5100 STAY OF ORDER OF ADMINISTRATIVE LAW JUDGE.**

The timely filing by any party of a notice of appeal to the board stays the order of the administrative law judge.

**Statutory Authority:** *MS s 14.06*

**History:** *8 SR 1482; L 1984 c 640 s 32*

**5215.5200 ORAL ARGUMENT BEFORE BOARD.**

Subpart 1. **Oral argument.** The board shall order oral argument where the factual or legal issues are sufficiently complex or unclear as to require oral argument. If ordered by the board, oral argument must be heard from each party or party's representative unless it is waived by that party.

Subp. 1a. **Procedure.** Each party shall be limited to ten minutes, or additional time as the board orders where the factual or legal issues are sufficiently complex or unclear as to require additional time. The appellant shall appear first, followed by each party in order of appearance in the caption. The appellant may reserve a portion of the time allotted for rebuttal. When reserving time for rebuttal, the appellant must notify the board prior to the start of argument.

Subp. 2. **Notice.** The executive secretary shall, at least ten days prior to the date set for oral argument, notify in writing all parties and the employer if the employer is not a party, of the date, hour, place, and time allotted to each party.

Subp. 3. [Repealed, 20 SR 2428]

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 20 SR 2428*

**5215.5210 REVIEW BY BOARD.**

Subpart 1. **Limited review.** The board is limited in its review of an administrative law judge's decision and order to the matters preserved in the record. The board may affirm, in whole or part, or reverse, in whole or in part, the decision and order or remand it to the administrative law judge for further proceedings.

Subp. 2. **Standard of review.** The board may revise or reverse the administrative law judge's decisions and orders if substantial rights of the petitioner or petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- A. in violation of constitutional provisions;
- B. in excess of the statutory authority or jurisdiction of the agency;
- C. made upon unlawful procedure;
- D. affected by other error of law;
- E. unsupported by substantial evidence in view of the entire record as submitted; or
- F. arbitrary or capricious.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *20 SR 2428*

**5215.5250** [Repealed, 20 SR 2428]

**5215.5300** [Repealed, 20 SR 2428]

**MISCELLANEOUS PROVISIONS****5215.5350 PETITION TO VACATE A FINAL ORDER OF COMMISSIONER.**

Subpart 1. **Filing.** A petition to vacate a final order of the commissioner must be filed with the board and a signed copy of the petition must be served on every party and intervenor within 30 days after service by mail of the order.

Subp. 2. **Response.** Within 20 days after being served with a copy of the petition, any party other than the petitioning party may file a response to the petition with the board. The response may include supporting affidavits.

Subp. 3. **Contents of the petition.** A petition filed under this part must set out the basis for the requested action consistent with Minnesota Statutes, section 182.664, subdivision 5. The showing of good cause as defined by Minnesota Statutes, section 182.664, subdivision 5, must be supported by affidavits.

Subp. 4. **Disposition.** The board may deny the petition or vacate the commissioner's order. The decision of the board must include findings of fact, conclusions of law, and an order. The board must sign and date the decision and serve the decision on all parties and intervenors.

Subp. 5. **Filing and service.** Filing and service of the petition must be made according to part 5215.0700.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *20 SR 2428*

#### 5215.5400 [Repealed, 20 SR 2428]

#### 5215.5500 STANDARDS OF CONDUCT.

All persons appearing in any proceedings before the board shall conform to the standards of ethical conduct required in the courts of the state of Minnesota.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 20 SR 2428*

#### 5215.5600 EX PARTE COMMUNICATION.

With respect to the merits of any case not concluded, there shall be no ex parte communication between the board, including any member, officer, employee, or agent of the board who is employed in the decision-making process, and any party or intervenor.

If ex parte communication occurs, the board may take whatever action fairness requires to remedy the effect of the ex parte communication consistent with this chapter and the statutory authority of the board.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 20 SR 2428*

#### 5215.5700 RESTRICTIONS ON COMMISSIONER.

In any proceeding before the board, the commissioner or designees of the commissioner shall not participate in or advise the board in its decision-making process.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; L 1984 c 640 s 32; 20 SR 2428*

#### 5215.5800 INSPECTION AND REPRODUCTION OF DOCUMENTS.

Subject to the provisions of law and any order of the commissioner, an administrative law judge, or the board restricting public disclosure of information, any person may, at the offices of the board, inspect and copy any document filed in any proceeding. All costs must be borne by the person.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 20 SR 2428*

#### 5215.5900 RESTRICTIONS ON FORMER EMPLOYEE OR MEMBER.

No former employee, member of the board, or employee of the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which the



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person participated personally and substantially during the period of employment or tenure.

No former employee, member of the board, or employee of the Department of Labor and Industry may appear before the board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which the person was involved during the period of employment or tenure, unless one year has elapsed since the termination of the employment or tenure.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 17 SR 1279; 20 SR 2428*

**5215.6000** [Repealed, 20 SR 2428]

### **5215.6100 PENALTIES.**

The board has no jurisdiction under Minnesota Statutes, section 182.667, to impose penalties.

**Statutory Authority:** *MS s 14.06; 175.171; 182.651; 182.661; 182.664*

**History:** *8 SR 1482; 13 SR 2552; 20 SR 2428*