



ILLINOIS DEPARTMENT OF LABOR

Pat Quinn  
Governor

Catherine M. Shannon  
Director

March 4, 2011

On February 22, the Department filed proposed rules and identical emergency rules for the “Payment and Collection of Wages or Final Compensation” [56 IAC 300]. The emergency rule became effective immediately and the proposed rule will be published in the Illinois Register on Friday, March 4, 2011.

Upon publication, the public will have 45 days to submit written comments regarding the rule to the Department. The comment period begins on March 4 and expires on April 18. Written comments should be submitted to:

Illinois Department of Labor  
Attn: Carmela Gonzalez  
160 N. LaSalle St., C-1300  
Chicago, Illinois 60601  
312-793-1808 (telephone)  
312-793-5257 (facsimile)

MICHAEL A BILANDIC BUILDING  
160 NORTH LASALLE, SUITE C-1300  
CHICAGO, ILLINOIS 60601-3150  
(312) 793-2800  
Fax: (312) 793-5257

900 SOUTH SPRING STREET  
SPRINGFIELD, ILLINOIS 62701  
(217) 782-6206  
Fax: (217) 782-0596

REGIONAL OFFICE BUILDING  
2309 WEST MAIN STREET, SUITE 115  
MARION, ILLINOIS 62959  
(618) 993-7090  
Fax: (618) 993-7258

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DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT  
CHAPTER I: DEPARTMENT OF LABOR  
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 300  
PAYMENT AND COLLECTION OF WAGES OR FINAL COMPENSATION

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- 300.100 Cash or Inventory Shortages (Repealed)
- 300.110 Failure to Follow Credit Card, Check-Cashing, Accounts Receivable Procedures (Repealed)
- 300.120 Acceptance of Disputed Paycheck (Repealed)
- 300.200 Cash Advance Repayment Agreement (Repealed)
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- 300.300 Damaged Property (Repealed)
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EMERGENCY

AUTHORITY: Implementing and authorized by Section 9 of the Illinois Wage Payment and Collection Act [820 ILCS 115/9].

SOURCE: Filed October 16, 1975, effective October 26, 1975; codified at 8 Ill. Reg. 18488; amended at 16 Ill. Reg. 13828, effective September 1, 1992; emergency amendment at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days; amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

**Section 300.450 Definitions**

EMERGENCY

Except for the terms set forth in Section 2 of the ~~Wage Payment and Collection~~ Act, all other terms used in this Part ~~300~~ shall have the meanings ~~as set forth~~ in this Section ~~herein~~.

- a) "Act" means the Illinois Wage Payment and Collection Act, ~~as amended [820 ILCS 115](Ill. Rev. Stat. 1991, ch. 48, pars 39m-1 et seq.)~~.
- b) "Administrative employee" means an employee as defined by Section ~~21313~~(a)(1) of the Fair Labor Standards Act of 1938 (29 USC ~~U.S.C.~~ 213(a)(1)) and ~~regulations promulgated thereunder (29 CFR Part 541, as both existed on March 30, 2003, (1992, no subsequent dates or editions), as amended at 56 FR 8251)~~.
- c) "Claim" means a signed application alleging a violation of the Act, accompanied by supporting documentation required by the Department.
- d) "Claimant" means any person who submits a claim.
- e) "Day" means a calendar day.
- f) "Department" means the Illinois Department of Labor, its ~~Director~~ director, and his/her authorized representatives.
- g) "Executive employee" means an employee as defined by Section ~~213132~~(a)(1) of

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the Fair Labor Standards Act of 1938 (~~29 U.S.C. 213(a)(1)~~) and ~~regulations promulgated thereunder at 29 CFR Part 541, as both existed on March 30, 2003, (1992, no subsequent dates or editions), as amended at 56 FR 8251.~~

- h) "Hearing Officer" means an individual authorized by the Department to determine the merits of claims alleging violations of the Act.
- i) "Other representative" means any person with a direct relationship to the party, who is not an attorney or legal representative, who can address the substance of the claim, including a spouse, relative or friend who can provide further clarification on the issues being considered or assist with translation for the party he or she represents.
- ji) "Party" means a claimant and any employer whose payment of wages or final compensation is in question.
- kj) "Professional employee" means an employee as defined by Section ~~21313~~(a)(1) of the Fair Labor Standards Act of 1938 (~~29 U.S.C. 213(a)(1)~~) and ~~regulations promulgated thereunder at 29 CFR Part 541, as both existed on March 30, 2003, (1992, no subsequent dates or editions), as amended at 56 FR 8251.~~

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

SUBPART B: WAGES OR FINAL COMPENSATION

**Section 300.510 Earned Commissions**

**EMERGENCY**

- a) Absent an express agreement to the contrary, an employee who is the procuring cause of a sale or other transaction is entitled to commission, notwithstanding the fact that the sale or other transaction was consummated by the principal personally or through another agent.
- b) ~~When~~Where the employer and employee agree that the employee is to be advanced a commission in anticipation of a particular sale, and the sale is subsequently voided, the employer may not deduct from the employee's wages or final compensation any amount greater than the amount of the commission previously advanced on that particular sale.

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(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.520 Earned Vacations**

**EMERGENCY**

- a) Whenever an employment contract or an employment policy provides for paid vacation earned by length of service, vacation time is earned pro rata as the employee renders service to the employer.
- b) Oral promises, handbooks, memoranda, and uniform patterns of practice may create a duty to pay the monetary equivalent of earned vacation.
- c) Claims for vacation pay must be brought to the Department within 3three years from the date the vacation is earned.
- d) Nothing in this Sectionprovision shall be construed to reduce or impair the right of the claimant to maintain a civil action to recover additional vacation pay found due by a courtsueh-courts.
- e) An employment contract or an employer's policy may require an employee to take vacation by a certain date or lose the vacation, provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of the contract or policy provision.
- f) The Department recognizes policies under whichprovisions whereby:
  - 1) no vacation is earned during a limited period at the commencement of employment. The employer must demonstrate that the policyprovision is not a subterfuge to avoid payment of vacation actually earned by length of service and, in fact, no vacation is implicitly earned or accrued during that period.
  - 2) vacation is earned and accrues at an accelerating rate during the year. The policyprovision is acceptable when the acceleration period and the changes in accrual rates are reasonable, and the policy is uniformly applied.
  - 3) the employer does not have separate arrangements for vacation and sick leave. Under the policyprovision, employees earn a certain

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~~amount~~~~number~~ of "paid ~~time~~~~days~~ off" ~~that~~~~which~~ they can use for any purpose, including vacation and sick leave. Because employees have an absolute right to take ~~this time~~~~these days~~ off (unlike traditional sick leave ~~in which~~~~where~~ using ~~such~~ sick leave is contingent upon illness), the Department ~~will~~~~shall~~ treat "paid ~~time~~~~days~~ off" as earned vacation days.

- g) Any employer that provides paid vacation to its employees must maintain true and accurate records of the number of vacation days earned for each year and the dates on which ~~such~~ vacation days were taken and paid.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

SUBPART C: PAYMENT OF WAGES OR FINAL COMPENSATION

**Section 300.600 Direct Deposit**

**EMERGENCY**

An employer shall not ~~require an employee to enroll in a direct deposit arrangement or~~ make payment of wages ~~or final compensation~~ by direct deposit unless the employee designates a bank or a financial institution.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.620 Personal Liability of Officers and Agents**

**EMERGENCY**

- a) ~~In addition to an individual who is deemed to be an employer pursuant to Section 2 of the Act, any officers of a corporation or agents of an employer who knowingly permit the employer to violate the provisions of the Act shall be deemed to be employers of the employees of the corporation and shall be personally liable for a claimant's wages or final compensation. An officer of a corporation or an agent of an employer may be personally liable under Section 13 of the Act for a claimant's wages or final compensation when the officer or agent actively asserted substantial control over the management and financial affairs of the corporation or employer.~~
- b) As used in ~~Subpart A of this Part~~~~Section 13 of the Act~~:

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- 1) "Knowingly" means knowledge of the existence of facts constituting the alleged violation, rather than a knowledge of the unlawfulness of the act or omission.
- 2) "Permit" means to allow to happen or to fail to prevent.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.630 Records and Notice Requirements**

**EMERGENCY**

- a) Every employer shall ~~make and maintain~~keep, for a period of not less than ~~3~~three years, ~~the following~~ true and accurate records ~~for each employee:~~of the name and address ~~of each employee~~, the hours worked each day in each work week ~~by each employee~~, the rate of pay, the amount paid each pay period ~~to each employee~~ and all deductions made from wages or final compensation. Additionally, any employer that provides paid vacation to its employees must maintain, for a period of not less than 3 years, true and accurate records of the number of vacation days earned for each year and the dates on which ~~such~~ vacation days were taken and paid ~~for a period of not less than three years~~.
- b) In the absence of employer records, a claimant may not be denied recovery of wages or final compensation on the basis that the employee is unable to prove the precise extent of uncompensated work or final compensation. An employee need only produce sufficient evidence to demonstrate the amount and extent of work or time earned as a just and reasonable inference. The employer must then produce evidence of the exact amount of work or time earned or produce evidence to negate the reasonable inferences drawn from the employee's evidence. The employer's failure to make and maintain records as required under subsection (a) shall not preclude a finding based on the information available that wages or final compensation are due, even though the award may be only approximate.
- c) Every employer shall furnish each employee with an itemized statement of deductions made from wages for each pay period.
- db) The employer shall bear the burden of showing that it was not possible to notify the employee in writing, at the time of hiring, of the rate of pay and of the time and place of payment. "Rate of pay" shall include a description of all wages ~~and~~ final compensation, as defined by Section 2 of the Act and this Partas

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~~further defined herein and hereafter.~~

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.640 Refusal to Pay Wages or Final Compensation**

**EMERGENCY**

- a) The duty to pay wages or final compensation arises out of a contract of employment, an employment policy, or an agreement between the parties. The Department ~~will~~**shall** make a determination in accordance with Subpart ~~F or GE of these rules~~ as to whether the duty to pay exists.
- b) An employer doing business at the time the duty to pay wages or final compensation arises is presumed to have the ability to pay.
- c) A willful refusal to pay is a voluntary, conscious and intentional act. An employer who subordinates the wage claims of employees to the claims of other creditors has ~~willfully~~**willfully** refused to pay wages or final compensation, in violation of the Act.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

SUBPART D: DEDUCTION FROM WAGES OR FINAL COMPENSATION

**Section 300.700 Scope of Subpart D**

**EMERGENCY**

Nothing in this Subpart shall be construed to permit an employer to violate the provisions of the Minimum Wage Law ~~[820 ILCS 105](Ill. Rev. Stat. 1991, ch. 48, pars. 1001 et seq.)~~ or the Fair Labor Standards Act of 1938, as amended (29 ~~USC~~**U.S.C.** 201 et seq.).

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.720 Written Agreement Authorizing Deductions**

**EMERGENCY**

Any written agreement between employer and claimant permitting or authorizing deductions

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from wages or final compensation must be given freely at the time the deduction is made. In the case of cash advances, the agreement may be made either at the time of the deduction or at the time of the advance itself.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.730 Cash or Inventory Shortages**

**EMERGENCY**

An employer shall not deduct from an employee's pay or otherwise demand reimbursement from an employee for cash and/or inventory shortages ~~shall not be deducted from an employee's pay~~ unless the employee's express written consent is given freely at the time the deduction or demand for reimbursement is made.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.760 Advanced Vacation Pay**

**EMERGENCY**

If an employer permits an employee to take a vacation ~~that~~which has not yet been earned, and the employee resigns or is terminated, the employer may not deduct the unearned vacation pay from the employee's wages or final compensation without a written agreement as set forth in ~~the rules pertaining to cash advances (see Sections 300.720 and 300.750).~~

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.800 Deduction Limit**

**EMERGENCY**

No cash advance repayment agreement shall provide for a repayment schedule of more than 15% of an employee's gross wages or final compensation per paycheck.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.810 Balance Due at Termination**

**EMERGENCY**

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If, upon termination, an employee owes an amount greater than 15% of gross wages or final compensation, that amount may be withheld from the employee's wages or final compensation, but only if such an arrangement was included in the agreement signed when the advance was made.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.930 Notice of Disputed Deductions**

**EMERGENCY**

- a) Notice by an employer of disputed deductions from wages under Section 9 of the Act shall be either typewritten or clearly handwritten and shall include: the name and last known address of the employee from whose wages or final compensation the deduction is being made; the amount that is being withheld; the reason for which the deduction is being made; the date on which payment would have been made; and the name, business address and telephone number of the employer and any officer or agent of the employer who will present the employer's position to the Department during its investigation of the deduction. ~~The Such~~ notice shall be prominently marked "Notice of Disputed Deduction" on both the letter and the envelope and shall be mailed or delivered to the Department's Chicago office on or before the day the money is due to the employee.
- b) The Department ~~will shall~~ notify the employee of the proposed deduction and provide an opportunity for the employee to contest the deduction. The employee's response shall be typewritten or clearly handwritten and shall state the ~~reasons~~ reason(s) why the employee contests the deduction. ~~The Such~~ response shall be prominently marked "DISPUTED DEDUCTION RESPONSE" on both the letter and the envelope and shall be mailed or delivered to the Department's Chicago office. If the employee does not respond within 10 days after receipt of the Department's ~~notice communication~~, the deduction shall be permitted and the Department will take no further action. Acceptance of late responses by the employee shall be at the sole discretion of the Department.
- c) The Department may permit a deduction when an employer can establish by clear and convincing evidence that:
  - 1) the employee is indebted to the employer in an amount equal to or greater than the amount sought to be withheld;~~;~~ and

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- 2) it would be inequitable to require the employer to make payment to the employee prior to the employee satisfying his/her obligation to the employer.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

SUBPART E: ~~FILING OF A CLAIM~~~~INVESTIGATION OF CLAIMS~~ FOR WAGES OR FINAL COMPENSATION

Section 300.940 Filing of a Claim~~and the Employer's Response~~  
EMERGENCY

- a) An employee may file a complaint with the Department alleging violations of the Act by submitting ~~2a~~ signed copies of a completed wage claim application on the form provided by the Department and by submitting 2 copies of all supporting documentation. Complaints shall be filed within one year~~180 days~~ after the wages or final compensation were due.
- b) Applications shall be reviewed by the Department to determine whether there is cause for investigation. The Department will limit its investigation to reviewing the 3~~three~~ years prior to the date the complaint was filed.
- c) The Department will seek to verify the accuracy of the employer's address, as provided by the claimant, using one or more of the following: When appropriate, the Department will notify the employer of the existence of the claim.
  - 1) address on file with the Department;
  - 2) address on file with the Secretary of State;
  - 3) address on file with any other State agency with which the employer has the duty to maintain a current address; or
  - 4) any other address the Department reasonably calculates to be a true and current address for the employer.
- d) The Department will notify the employer of the existence of the claim. The employer must remit payment of all undisputed amounts and submit a written

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- ~~explanation of all the amounts remaining in dispute within 10 days after receipt.~~
- e) ~~The employer's response shall include the reason(s) for non-payment and any business records and other documentation to support the employer's position.~~
  - f) ~~Upon receipt of an employer's response disputing the claim, the Department may, when appropriate, send a copy of the employer's response to the claimant.~~
  - g) ~~If the employee disagrees with the employer's response, he/she must submit a response to the Department within 10 days stating his/her reasons for the disagreement. If the employee fails to submit a written response, the Department shall dismiss the claim.~~
  - h) ~~If the employer fails to respond within the prescribed deadlines, the Department shall review the information offered by the employee in order to determine whether the wages are due.~~
  - i) ~~The Department may consider untimely submissions by either party upon written request by the party within a reasonable period of time, if there is a showing that the delay was occasioned by good cause beyond the party's control.~~

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.941 Employer and Employee Response**  
**EMERGENCY**

- a) The employer must remit payment of all undisputed amounts and submit a written explanation of all the amounts remaining in dispute within 15 days from the date of the Department's notice.
- b) The employer's response shall include the reasons for non-payment and any business records and other documentation to support the employer's position. Two copies of all supporting documentation shall be provided to the Department.
- c) Upon receipt of an employer's response, the Department may send a copy of the employer's response to the claimant.
- d) Within 15 days after receiving the employer's response from the Department, the employee must submit a response to the Department in order to continue the

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Department's investigation. If the employee fails to submit a written response, the Department may dismiss the claim.

- e) If the employer fails to respond to the Department's notice, the claim is \$3000 or less per employee and the Department can verify the accuracy of the employer's address consistent with Section 300.940(c), a formal default hearing will be conducted in accordance with Subpart G.
- f) If the employer fails to respond within the prescribed deadlines, the Department will review the information offered by the employee in order to determine whether wages or final compensation are due and may make a determination that the Act has been violated based upon the evidence available to the Department. The Department will notify both parties of its determination.
- g) The Department may consider untimely submissions by either party, upon written request by the party within a reasonable period of time, if there is a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.942 Withdrawal of a Claim**  
**EMERGENCY**

An employee may voluntarily withdraw his or her claim by submitting a written statement to the Department or making a verbal statement on the record during the hearing or at any time prior to the issuance of the Hearing Officer's decision. The Department will provide written notice to all parties of the withdrawal of the claim.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**SUBPART F: INFORMAL INVESTIGATIVE HEARING**

**Section 300.950 Scheduling and Notice of an Informal Investigative Hearing**  
**EMERGENCY**

- a) When the Department is unable to resolve a dispute ~~after~~upon review of the

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information submitted by the parties, the Department may schedule an informal investigative hearing before a Hearing Officer. The Department conducts hearings to obtain further information; to determine if any violation of the Act exists; to attempt to resolve the matter equitably; and to decide whether there is sufficient evidence to recommend court action.

b) A written notice of hearing shall be sent to the parties not less than 10 days prior to the date of the hearing.

c) On the day of a scheduled in-person hearing, the parties may be given a grace period of an additional 10 minutes to arrive at the hearing.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.960 Continuances**

**EMERGENCY**

Parties shall be prepared to proceed at the informal hearing. Absent an emergency, all requests ~~A request by one party for a continuance will be granted prior to the hearing only if the other party agrees and the Hearing Officer grants permission. Otherwise, a request~~ for continuances a continuance must be made in writing ~~person~~ to the Hearing Officer prior to at the time of the ~~prior to~~ scheduled informal hearing and will be granted only upon a showing of good cause. Examples of good cause include the non-receipt or delayed receipt of mail or the unavailability of a witness or a party due to accident, illness or other circumstances beyond the party's control. The Department may also cancel and continue a hearing due to an emergency or the unavailability of a Hearing Officer. If granted, the Department will provide the parties with notice of the continuance of the hearing.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.970 Application of the Rules of Evidence, Pleadings and Procedures in an**

**Informal Investigative Hearing**

**EMERGENCY**

When a Hearing Officer makes an investigation or conducts a hearing, the Hearing Officer is not bound either by the rules of evidence or by any technical or formal rules of pleading or procedure.

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(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.980 Participants at Informal~~Attorneys and Witnesses in~~ Investigative Hearings  
EMERGENCY**

- a) A party may be accompanied at an informal investigative hearing by his/her attorney; or other representative and by a translator, if necessary. The participation of the other representative in the informal hearing shall be limited to fact-finding and support functions. Other representatives shall not be permitted to engage in any conduct or function that constitutes or reasonably approximates the practice of law. Other representatives shall not: examine or cross-examine any party or witness; offer any documents or other exhibits into evidence; make evidentiary, procedural or other legal objections; cite, file or interpret case law, statutes, administrative rulings or other legal authority; make legal arguments or interpretations; or give legal advice or opinions to parties or witnesses. Other representatives must provide to the represented party for signature a written disclosure document that explicitly states that the representative is not an attorney and that the representative is not permitted to present legal arguments or otherwise engage in any function that reasonably approximates the practice of law as described in this subsection (a). The document shall be signed by both the representative and the represented party.
- b) The parties may bring witnesses to the hearing, ~~and but~~ the Hearing Officer shall ~~hear~~decide which witnesses with information related to the claim. The Hearing Officer shall determine be heard and the order in which the witnesses are to they shall be heard and shall limit testimony to that which is relevant, not cumulative in nature, not unduly repetitious and material to the claim. In deciding whether to permit a witness to testify, the Hearing Officer may consider the relevance and materiality of the testimony. The Hearing Officer may exclude witnesses ~~and other persons~~ from the hearing when they are not giving testimony. The Hearing Officer shall conduct and control the proceedings. No tape recordings, stenographic report or other verbatim record of the hearing shall be made. The Department will provide translation services for the proceedings as necessary.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.990 Contumacious Conduct at Informal~~in~~ Investigative Hearings  
EMERGENCY**

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If any person becomes so disruptive or abusive that a full and fair informal investigative hearing cannot be conducted, the Hearing Officer shall exclude the person from the hearing. The Hearing Officer, in his/her discretion, may take any of the following actions: continue the hearing without the participation of the excluded individual; render a decision based upon the evidence previously presented; dismiss the employee's claim; or strike the employer's response.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1000 Informal Telephone Hearings**  
**EMERGENCY**

- a) The Department does not routinely hold informal investigative hearings by telephone. Written requests to participate by telephone must be received by the Department's Chicago office no later than 7 days prior to the hearing date. The ~~request~~Request shall be prominently marked "REQUEST FOR TELEPHONE HEARING" on both the letter and the envelope. ~~The~~Such request shall be ~~typewritten or clearly written in writing~~ and ~~shall~~ contain a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.
- b) On its own initiative, the Department may also schedule a matter for telephone hearing without regard to the 7 day notice requirement.
- c) The Department may consider untimely requests for telephone hearings upon a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.
- bd) A party shall not consider its request granted unless the participant receives notice of the Department's approval prior to the hearing date by telephone or ~~letter~~in writing.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1020 Review of Hearing Officer Determination Decisions**  
**EMERGENCY**

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- a) Requests for review of a Hearing Officer's determination must be made in writing to the Department's Chicago office, within 15 days ~~after the~~ after the date of the Department's determination ~~decision~~. The request shall be prominently marked "REQUEST FOR REVIEW" on both the letter and the envelope. The request must set forth the reasons why the party believes the Hearing Officer ~~misconstructed~~ misconstrued the evidence or misapplied the law to the facts, and any newly discovered evidence ~~which~~ the party could not have discovered by the hearing date or, if applicable, why the party failed to attend the informal hearing.
- b) The Department may consider untimely submissions by either party upon written request by the party, made within a reasonable period of time, if there is a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.

(Source: Amended by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

SUBPART G: FORMAL DEFAULT HEARINGS

Section 300.1030 Applicability  
EMERGENCY

This Subpart shall apply to complaints filed with the Department after January 1, 2011 for violations of the Act occurring on or after January 1, 2011.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

Section 300.1040 Scheduling and Notice of a Formal Default Hearing  
EMERGENCY

- a) If the employer does not timely respond to the written notice of claim issued by the Department in accordance with Section 300.941 and the claim is for wages or final compensation totaling \$3000 or less per employee, and the Department can verify the accuracy of the employer's address consistent with Section 300.940(c), the Department will schedule a formal default hearing before a Hearing Officer pursuant to this Subpart.

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- b) A written notice of the formal default hearing shall be served on the parties not less than 21 days prior to the date of the hearing. The notice shall advise all parties that a failure to appear at the default hearing may result in the entry of an enforceable judgment against a party not appearing. The notice shall further advise all parties that, should the employer appear at the default hearing, the Hearing Officer may terminate the formal default hearing pursuant to this Subpart and conduct the matter as an informal investigative hearing in accordance with Subpart F.
- c) On the day of the scheduled in-person default hearing, the parties may be given a grace period of an additional 10 minutes to arrive at the hearing.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1050 Manner and Service of Notice**  
**EMERGENCY**

- a) Service of notice of a formal default hearing shall be complete when the notice of hearing is:
- 1) Personally served; or
  - 2) Sent not less than 21 days prior to the date designated for the default hearing by:
    - A) Regular US mail, postage prepaid, to the parties' addresses; or
    - B) Certified US mail, postage prepaid, to the parties' addresses.
- b) For purposes of subsection (a), notice of a formal default hearing shall be deemed properly served if sent to the parties at an address:
- 1) On file with the Department;
  - 2) On file with the Illinois Secretary of State;
  - 3) On file with any other State agency with which the party has a duty to maintain a current address; or

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- 4) The Department reasonably calculates to be a true and current address for the party.
- c) The notice of a formal default hearing under this Subpart shall include:
  - 1) The time, place and nature of the hearing;
  - 2) A copy of the claim;
  - 3) The legal authority and jurisdiction under which the hearing is to be held;
  - 4) Notice that, upon appearance by the employer, the formal default hearing may be terminated and converted to an informal investigative hearing conducted in accordance with Subpart F;
  - 5) Instructions for all parties to bring all evidence and/or witnesses that support or dispute the employee claims;
  - 6) A description of the procedure to request a continuance or to appear at the hearing telephonically; and
  - 7) A designation of a Hearing Officer to preside over the default hearing and the address of the Hearing Officer.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1060 Formal Default Hearing Continuances**  
**EMERGENCY**

Parties shall be prepared to proceed at the hearing. Absent an emergency, all requests for a continuance must be made in writing to the Hearing Officer prior to the scheduled default hearing and will be granted only upon a showing of good cause. Examples of good cause include the non-receipt or delayed receipt of mail or the unavailability of a witness or a party due to accident, illness or other circumstances beyond the party's control. The Department may also cancel and continue a hearing due to an emergency or the unavailability of a Hearing Officer. If granted, the Department will provide the parties with notice of the continuance of the hearing.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

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**Section 300.1070 Application of the Rules of Evidence, Pleadings and Procedures in a Formal Default Hearing**  
**EMERGENCY**

- a) Technical rules of evidence do not apply in a default hearing before a Hearing Officer. The decision of the Hearing Officer will be based upon the evidence and testimony. The Hearing Officer may rely upon evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. Absence of employer records required to be made and kept by an employer pursuant to Section 300.630 and Section 10 of the Act shall not deny a claimant recovery of wages or final compensation on the basis that the employee is unable to prove the precise extent of uncompensated work or final compensation. An employee need only produce sufficient evidence to demonstrate the amount and extent of work or time earned as a just and reasonable inference. The employer must then produce evidence of the exact amount of work or time earned or produce evidence to negate the reasonable inferences drawn from the employee's evidence. The employer's failure to make and maintain records as required under Section 300.630 shall not preclude a finding based on the information available that wages or final compensation are due, even though the award may be only approximate.
- b) A complete record of all proceedings before the Hearing Officer at the default hearing shall be maintained. The record will consist of: a verbatim record of the parties and witnesses; all pleadings, motions, rulings, evidence received, matters officially noticed, offers of proof, objections and rulings thereon; decision and findings of fact; and any ex parte communications.
- c) The testimony of a party or witness shall be sworn or affirmed. If a party or witness refuses to consent to the recording of the default hearing by the Hearing Officer or refuses to take the oath or affirmation when requested, the participation of that individual in the default hearing shall be terminated, and the default hearing shall be conducted as if the individual failed to appear.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1080 Participants at a Formal Default Hearing**  
**EMERGENCY**

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- a) A party may be accompanied at a formal default hearing by his/her attorney or other representative. The participation of the other representative in the default hearing shall be limited to fact-finding and support functions. Other representatives shall not be permitted to engage in any conduct or function that constitutes or reasonably approximates the practice of law. Other representatives shall not: examine or cross-examine any party or witness; offer any documents or other exhibits into evidence; make evidentiary, procedural or other legal objections; cite, file or interpret case law, statutes, administrative rulings or other legal authority; make legal arguments or interpretations; or give legal advice or opinions to parties or witnesses. Other representatives must provide to the represented party for signature a written disclosure document that explicitly states that the representative is not an attorney and that the representative is not permitted to present legal arguments or otherwise engage in any function that reasonably approximates the practice of law as described in this subsection (a). The document shall be signed by both the representative and the represented party.
- b) The parties may bring witnesses to the default hearing and the Hearing Officer shall determine the order in which the witnesses are to be heard and shall limit testimony to that which is relevant, not cumulative in nature, not unduly repetitious and material to the claim. In deciding whether to permit a witness to testify, the Hearing Officer may consider the relevance and materiality of the testimony. The Hearing Officer may exclude witnesses when they are not giving testimony. The Department will provide translation services for the default hearing as necessary.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1090 Conduct in a Formal Default Hearing**  
**EMERGENCY**

- a) The Hearing Officer shall conduct and control the default hearing, which will be confined to the factual and/or legal issues of the claim. The Hearing Officer will ensure that all parties who have appeared have a reasonable opportunity to present all relevant evidence and testimony regarding the issues.
- b) Following examination of each witness by the Hearing Officer, that witness may be questioned and cross-examined by any other party, except the other

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representative, and further questioned by the Hearing Officer, if necessary, to ensure clarity and completeness of the issues and of the record.

- c) If any person becomes abusive or disruptive so that a full and fair hearing cannot be conducted, the Hearing Officer shall exclude that person from the hearing. The Hearing Officer shall then continue the hearing without the participation of the excluded individual and will render a decision based on the evidence in the record.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1100 Telephone Hearing for a Formal Default Hearing**  
**EMERGENCY**

- a) Written requests to participate via telephone must be received by the Department's Chicago office no later than 7 days prior to the hearing date. The request shall be prominently marked "REQUEST FOR TELEPHONE HEARING" on both the letter and envelope. The request shall be in writing and contain a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.
- b) On its own initiative, the Department may also schedule a matter for telephone hearing without regard to the 7 day notice requirement.
- c) The Department may consider untimely requests for telephone hearings by the party upon a showing that the delay was occasioned by good cause beyond the party's control. Examples of good cause include the non-receipt or delayed receipt of mail, accident, illness or other circumstances beyond the party's control.
- d) A party shall not consider the request granted unless the participant receives notice of the Department's approval prior to the hearing date by telephone or in writing.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1110 Subpoenas**  
**EMERGENCY**

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The Department may issue an administrative subpoena to compel the attendance of a witness and/or the production of documents upon the Department's determination that the information to be produced by a subpoena is necessary and relevant to the Department's adjudication of the claim and cannot be obtained by any other reasonable means.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1120 Ex Parte (One Party Only) Communications**  
**EMERGENCY**

- a) A Hearing Officer may not engage in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. If the Hearing Officer receives any ex parte communication, including any documents, the Hearing Officer shall inform the parties of the substance of any such communication and provide copies of any written communication or documents. The other party shall be given an opportunity to review any ex parte communication.
- b) Nothing shall prevent the Hearing Officer from communicating ex parte about routine matters such as requests for continuances or opportunities to inspect the file as long as the parties are informed of the substance of the ex parte communication. The date and type of communication, the persons involved and the results of those routine communications shall be part of the record.
- c) When a party fails to appear at the default hearing, the other parties' participation at the hearing shall not be considered ex parte communication.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1130 Disqualification of a Hearing Officer**  
**EMERGENCY**

At any time prior to the issuance of a substantive ruling by a Hearing Officer, a party may move to disqualify the Hearing Officer on the grounds of bias or conflict of interest. The motion shall be made in writing to the General Counsel or Chief Administrative Law Judge, with a copy to the Director and the Hearing Officer, setting forth the specific instances of bias or conflict of interest. The Director and/or her/his designee will assign the matter for a determination to a Hearing Officer not challenged in the motion. An adverse decision or ruling, in and of itself, is

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not grounds for disqualification. The Hearing Officer's employment or contract as a Hearing Officer by the Department is not, in and of itself, a conflict of interest. The case shall be suspended until the neutral Hearing Officer rules on the motion. The neutral Hearing Officer may decline to disqualify the presiding Hearing Officer or appoint another Hearing Officer to hear the case.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1140 Consolidation/Severance**  
**EMERGENCY**

- a) The Department may, on its own or at the request of a party, consolidate hearings if it believes a common question of fact or law is involved, consolidation will expedite the hearings and no right of any party will be prejudiced.
- b) All parties will be given an opportunity to be heard on the issue of consolidation and may be severed from the proceeding upon a showing of good cause.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1150 Failure of a Party to Appear at a Formal Default Hearing**  
**EMERGENCY**

- a) Failure of a claimant to appear at a scheduled formal default hearing may result in dismissal of the claim. If the hearing or any party's appearance is by telephone, failure of that party to inform the Hearing Officer of the telephone number at which he or she can be reached, or failure to answer the telephone at the scheduled time, may result in dismissal of the claim.
- b) Failure of the employer to appear at a scheduled formal default hearing shall cause the Hearing Officer to issue a decision based on the evidence introduced and the evidence of record. If the hearing or the employer's appearance is by telephone, failure of the employer to inform the Hearing Officer of the telephone number at which the employer can be reached, or failure to answer the telephone at the scheduled time, shall cause the Hearing Officer to issue a decision based on the evidence introduced and the evidence of the record. Failure of the employer to appear may also result in an entry of default judgment against the employer.

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- c) Failure of any witness to appear at a scheduled formal default hearing shall cause the Hearing Officer to conduct the hearing with those parties and witnesses who have appeared, and to issue a decision based on the evidence introduced and the evidence of record. If the hearing or the witness' appearance is by telephone, failure of that witness to inform the Hearing Officer of the telephone number at which he or she can be reached, or failure to answer the telephone at the scheduled time, shall cause the Hearing Officer to conduct the hearing with those parties and witnesses who have appeared and to issue a decision based on the evidence introduced and the evidence of record.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1160 Notice and Appeal of Department's Default Order**  
**EMERGENCY**

- a) Following the entry of a final default order, the Department will send written notice of its order to the parties by regular U.S. mail, setting forth the amount of the judgment, if any, including all damages, administrative fees and penalties, as well as the parties' appeal rights. Service shall be presumed to be accomplished upon mailing.
- b) A party may file a motion to reconsider with the Department within 15 days of the Department's order and such motion will only be considered by the Department for procedural issues. A motion to reconsider should be sent to the Chief Administrative Law Judge at the Department's Chicago office. The Department will issue a written decision on any motions to reconsider and serve such decision on all parties via regular US mail. No further appeal process or administrative remedies may be sought at the Department level.
- c) Any party may appeal the Department's order or dismissal to the circuit court within 35 days in accordance with the provisions of the Administrative Review Law [735 ILCS 5/Art. III]. If a motion to reconsider is filed with the Department, the time period to appeal to the circuit court shall begin when the Department issues its written decision on any motion to reconsider via regular US mail.
- d) The order of the Department will become final and enforceable if no appeals are filed within 35 days after the Department's order or after all appeals are exhausted.

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(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**SUBPART H: CIVIL, CRIMINAL AND ADMINISTRATIVE FEES**

**Section 300.1170 Applicability**  
**EMERGENCY**

This Subpart shall apply to complaints filed with the Department after January 1, 2011 for violations of the Act occurring on or after January 1, 2011.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1180 Non-Waivable Administrative Fee to the Department**  
**EMERGENCY**

If the Department determines that an employer owes wages or final compensation to the claimant, it shall assess a \$250 non-waivable administrative fee payable to the Department and make the administrative fee against the employer a part of the determination. The administrative fee shall be due to the Department within 15 days after the demand or order becomes final.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1190 Statutory Damages Due to the Employee**  
**EMERGENCY**

If the Department determines that an employer owes wages or final compensation to the claimant, statutory damages shall be assessed at 2% of the amount owed, multiplied by the number of months that elapse between the time of initial underpayment and the time the demand or order is paid. The total amount due to the employee, including the unpaid wages and/or final compensation plus statutory damages, shall be due to the employee within 15 days after the demand or order becomes final.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1200 Additional Penalties Due to the Department and Employee**  
**EMERGENCY**

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If an employer fails to comply with the demand or order within 15 days after the demand or order becomes final, the employer shall also be liable to the Department for a statutory penalty in the amount of 20% of the amount owed and shall be additionally liable to the claimant for a statutory penalty in the amount of 1% per day of the amount owed. The Department may periodically seek to amend the demand or final order to incorporate these penalties.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

**Section 300.1210 Payment of Demands or Final Orders; Penalties and Fees**  
**EMERGENCY**

An employer shall mail 2 separate checks or money orders to pay the amount of a demand or final order, one for the amount of any wages or final compensation, statutory damages and statutory penalties owed to the employee, the other for the amount of any penalties and fees owed to the Department.

(Source: Added by emergency rulemaking at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)