

**Buffalo Living Wage Commission
Rules and Procedures for Hearings
Adopted April 12, 2006**

1. **Legal Authority.** The powers of the Living Wage Commission enumerated by the Living Wage Ordinance include the following:
 - a. To investigate and address any alleged violations at its sole discretion;
 - b. To hold public and private hearings and take testimony under oath;
 - c. To receive, investigate, and hold hearings in connection with complaints by employees of non-compliance with the Ordinance and retaliation by employers against employees asserting their rights under the Ordinance;
 - d. To issue and make public written findings in connection with investigations of complaints or other allegations of non-compliance;
 - e. To recommend sanctions in connection with findings of non-compliance after a notice and hearing to employer.

2. **Hearing Rules.** The following rules shall apply to all hearings held in order to make final findings and recommendations regarding alleged violations of the Ordinance.
 - a. **Notice.** All parties will be sent a notice of the hearing, sent by certified mail, postmarked at least 14 days before the hearing. The notice will also be filed with the City Clerk at least 14 days before the hearing. The notice will include:
 - i. The time, place, and purpose of the hearing;
 - ii. The legal authority for the holding of the hearing;
 - iii. A short summary of the allegations to be considered;
 - iv. The name of the presiding officer;
 - v. A statement that free interpreting services for people with hearing impairments or limited English proficiency will be made available upon a request made a reasonable time in advance of the hearing;
 - vi. A copy of these Rules.

- b. **Parties.** The parties will include
 - i. any person or entity alleged to have violated the Ordinance,
 - ii. any person or entity who has made a grievance, alleged retaliation, or otherwise alleged a violation of the Ordinance, except
 - 1. where that person has chosen to remain anonymous or
 - 2. where disclosure of that person's identity
 - a. would constitute an unwarranted invasion of personal privacy under New York state law, and
 - b. is not otherwise required by law.

- c. **Presiding Officer.** The presiding officer may be a member of the Commission or a person appointed by the Commission.
 - i. If a party feels that the presiding officer is biased, the party may file an affidavit of bias with the Commission. The affidavit must be received at least seven days before the hearing. The Commission may then choose to replace the presiding officer.
 - ii. The presiding officer is authorized to:
 - 1. administer oaths and affirmations;
 - 2. issue subpoenas;
 - 3. regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents
 - 4. perform any other duties prescribed by the Commission.

- d. **Written Submissions.** The Commission may make, and may require a party to make, prior to the hearing, a written statement of the party's legal arguments and a summary of the material facts upon which the party will rely.

- e. **Subpoenas.** The Commission may issue subpoenas requiring attendance and testimony and the production of documents or other evidence.

f. **Default.** The Commission may consider a failure to attend a hearing to be an admission of the allegations contained in the Notice of Hearing.

g. **Record.**

i. The record shall include

1. all notices;
2. written submissions from the Commission or a party made prior to the hearing;
3. evidence presented at the hearing;
4. a statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
5. questions and offers of proof, objections thereto, and rulings thereon;
6. proposed findings and exceptions, if any;
7. findings of fact, conclusions of law, or other recommendations made by the Commission;
8. any decision, determination, opinion, order, or report rendered.

ii. The Commission shall make a complete record of the hearing by whatever means it deems appropriate, including but not limited to stenographic transcription or electronic recording.

iii. After making its findings and recommendations, upon request of a party, the Commission shall provide the party with a copy of the record and the transcript of the hearing. The Commission may charge the party for the actual cost of providing the transcript unless a statute provides otherwise.

h. **Evidence**

- i. Evidence may be presented by the parties or by the Commission and its staff or volunteers.
- ii. Irrelevant or unduly repetitious evidence or cross-examination may be excluded.

- iii. The burden of proof shall be on the person or persons alleging the violation.
- iv. Decisions must be based solely on the record and supported by substantial evidence.
- v. Unless otherwise provided by any statute, the Commission need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record.
- vi. Subject to these requirements, the Commission may, for the purpose of expediting hearings, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.
- vii. All evidence, including records and documents in the possession of the Commission which the Commission will consider in making its findings, shall be offered and made a part of the record. All such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.
- viii. A party shall have the right to cross-examine any witnesses who testify at the hearing.
- ix. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

i. Decisions.

- i. Decisions of the Commission will be in writing and will include findings of fact and conclusions of law or reasons for the decision.
- ii. The Commission will make a decision within fourteen days of the conclusion of the hearing.
- iii. A copy of the decision shall be mailed promptly to each party and to the party's attorney of record.
- iv. The LWC will maintain an index by name and subject of all written decisions rendered in hearings. The index will be available for public inspection and copying.
- v. Personal information contained in decisions and the index may not be disclosed if disclosure would constitute an unwarranted invasion of personal privacy under the New York Freedom of Information Law.

3. Sanctions

- a. After a hearing, the Commission may recommend, by a majority vote of the Commission, sanctions against an employer who has violated the Ordinance.
- b. The recommended sanctions may include one or more of the following:
 - i. Withholding payment of any amount due.
 - ii. Wage restitution for each affected employee.
 - iii. Suspension or termination of ongoing contracts.
 - iv. Ineligibility for further city contracts for up to three years or until all penalties and restitution have been paid in full.
- c. In a case of retaliation, the recommended sanctions may include any of the above, and/or:
 - i. Reinstatement of a discharged or demoted employee;
 - ii. Back pay to the date of the violation.