



# HEARINGS

## How to Represent Yourself at your Employment Hearing

### INTRODUCTION

This is a guide to helping workers represent themselves at certain kinds of employment related hearings without a lawyer, e.g., unemployment compensation hearings, workers' compensation hearings, and discrimination hearings. It is meant to provide a very basic understanding of the typical format and rules for these types of hearings. **Be sure to consult the specific agency holding your hearing for more detailed information.**

### PREPARING FOR YOUR HEARING

#### I. The Law

Figuring out what law or laws apply to your case can be difficult for a non-lawyer. If you have access to the Internet, you can find general information about different employment laws at [www.lawhelp.org/dc](http://www.lawhelp.org/dc) or at [www.dcejc.org](http://www.dcejc.org). In addition, you can visit a D.C. Employment Justice Center (EJC) Workers' Rights Clinic, where you may be able to receive free legal advice about your case. The times & locations for the EJC clinics are at the end of this handout.

#### II. The Burden of Proof

In employment cases, having the burden of proof means that you must prove your case by a "preponderance of the evidence." In other words, you must convince the person deciding the outcome of your case (usually an administrative law judge) that it is "more likely than not" that your claim is true.

In most employment cases, you, the employee, will have the burden of proof. There are, however, two exceptions to this general rule. In unemployment compensation hearings, the employer has the burden to prove that you either voluntarily quit or committed regular or gross misconduct. And, when a D.C. government employee appeals his or her termination of employment, the D.C. government agency employer has the burden to prove that the termination was for just cause.

### III. The Facts

Once you know what law applies to your case and your burden of proof, you need to figure out what facts you need to prove to win your case. Below are some examples:

Unemployment Compensation Case Example: Your application for unemployment benefits was denied because your former employer told the claims examiner that you were fired for misconduct, specifically that you were late to work on several occasions and failed to call your supervisor to tell her that you would be late in violation of a company rule. In this case, you will need facts showing that (1) you were not late for work on the days your employer states; (2) your employer does not have a rule requiring employees to call in when they are going to be late; and/or (3) your employer has a rule but does not enforce it.

Workers' Compensation Case Example: Your job is to paint houses. While painting a house, you fell off a ladder and broke your leg. You will likely need to prove that (1) your leg was broken because of the fall; (2) you were at work when you fell; (3) you were unable to paint houses for a period of time because your leg was broken; and (4) you sought treatment from a doctor or hospital for a broken leg around the time that you were injured.

Discrimination Case Example: You believe that you were turned down for a promotion because you are Asian. You will likely need to prove that: (1) you were qualified for the promotion; (2) you applied for the promotion; (3) you were not given the promotion; and (4) a less qualified non-Asian person was given the promotion. In addition, you should look for facts showing that the hiring official preferred a non-Asian candidate, e.g., the hiring official is non-Asian, has never hired an Asian candidate, made derogatory remarks regarding an Asian employee, etc.

### IV. Assembling your Evidence

Write down each fact that you need to prove, and, under each fact, list each piece of evidence that you have to prove it. Your evidence might include documents, objects, or the testimony of witnesses. Remember that you are also a witness, so even if no one else saw something happen, your testimony about what happened

is also evidence. The following charts are basic examples of what such a list might look like:

### Unemployment Case

What I need to prove	I was not late on the days my employer claims I was late.	My employer does not have a rule requiring employees to call in when they are going to be late.
Item 1	My time card records	My employee handbook
Item 2	My testimony that I was at work at the right start time.	My testimony that I have never heard of such a rule.
Item 3	Testimony of a co-worker saying he or she saw me at work at the right start time.	Testimony of a co-worker that he or she has never heard of such a rule.

### Workers' Compensation Case

What I need to prove	I broke my leg.	I broke my leg on the job.
Item 1	A report from my doctor stating I broke my leg.	My testimony that I broke my leg when I fell off a ladder painting a house for my employer.
Item 2	Pictures of my broken leg in a cast.	The testimony of co-worker stating he or she saw me fall off a ladder while painting a house for my employer.

### Discrimination Case

What I need to prove	I was qualified for the promotion.	A less-qualified person was hired.
Item 1	The ad for the position	The hiring officials testimony regarding who was hired and the person's qualifications
Item 2	My resume	An office email announcing who was hired
Item 3	My last written evaluation	The hired person's resume

Remember that each piece of evidence should be:

- Relevant - It must tend to show the truth of something that you need to prove.
- Not privileged - Usually, this is a problem for the employer and not you. For example, your employer cannot generally ask you what you told an attorney about your case for purposes of getting legal advice. So if you are given legal advice at an EJC Workers' Right Clinic, you do not have to tell your employer or your employer's representative what was said.

- Not hearsay - Testimony is generally hearsay if the witness testifies about a statement someone else made. Usually, the judge wants to have the person who actually made the statement in court to testify. This is not always possible and, at some hearings, hearsay testimony is allowed. For example, in workers' compensation hearings, your doctor does not need to show up to testify. Instead, you can submit a written report from your doctor.

If not, the other side will likely object to your question and the judge may not let the witness answer or let the evidence in the record at the hearing.

You will generally have two types of evidence: witnesses and documents. For your witnesses, to prepare for the hearing, make a list of the questions you need to ask each witness. They should be questions that when the witness answers, he or she will say something that will help you prove your case.

For documents, make a list of your documents and give each document a number. This is called your "exhibit list." Generally, you should make three copies of your documents: one for you, one for the employer and one for the judge. Place the exhibit list on top of each set of copies.

## V. Pre-hearing Conference

In some cases the judge may hold a pre-hearing conference before the hearing. If there is going to be a pre-hearing conference, you should receive a Notice of Hearing that also includes the time and place of the pre-hearing conference, or the judge may send you an order or letter notifying you of the time and place of any pre-hearing conference.

The Pre-Hearing conference generally provides an opportunity for the parties to:

- set a schedule of things that may have to happen before the hearing. e.g., discovery;
- help the parties narrow the issues that are in dispute;
- give the parties a chance to discuss settling differences without a hearing, either informally or through mediation.

## THE HEARING

### I. Opening Statement

In most hearings, the judge will begin the hearing by asking each side to briefly explain or describe its side of the case. This is generally called an "opening statement." Typically, you, as the employee, will go first.

You should speak clearly, be serious, and be polite. And you should avoid the temptation to use "fancy" legal type language. Use your normal vocabulary. You should also keep your statement short. Generally, 3 to 5 minutes will do. Just tell the judge what happened from your perspective and what evidence you plan to present to prove your case.

For example, in an unemployment case, you might make the following opening statement:

*Your honor, my supervisor fired me on June 10, 2007. She said it was because I was late for work on January 5, March 18, May 5 and June 9, 2007, and that I failed to call in to tell her that I would be late on those days. I was not late on any of those days, and, I will present my time records from those dates to prove it. In addition, my employer does not have a policy that employees must call in if they are going to be late. My employer has a detailed employee handbook listing all of the rules, including rules about being late. I brought the handbook with me today, and, as you will see, it does not contain any mention of such a policy. Thus, my evidence will show that I did not engage in the misconduct that I am accused of and that I am eligible for unemployment benefits.*

Try to avoid stating opinions, arguments, or conclusions, and stick to the facts. This distinction can be difficult, but ask yourself: Do I have an exhibit or witness (including me) that can testify or show that what I'm about to say is true? Here are some examples:

<b>Good</b>	<b>Avoid</b>
I met the job qualifications, but he hired a white man who never graduated high school.	He discriminated against me. OR He is a racist.
I broke my leg at work while performing my normal duties.	I should have been given worker's compensation.

## II. Witnesses: Calling and Questioning - Direct Examination

When you call a witness that is favorable to your case and ask questions that is called a direct examination.

If the judge does not do it for you, start by asking your witness for his or her name and address for the record. Then, you can proceed with asking your list of questions.

It is possible that one or more of your witnesses will say something unexpected, talk too long, or not say something you want them to say. Try several times to get the answer you need and consider rephrasing the question. Do not argue with your witness. If they are simply unwilling to say what you'd hoped they would say, you can always try to ask a leading (i.e., yes or no) question, but understand that the other party may rightfully object.

Sometimes, the judge will interrupt with questions or will ask his or her own set of questions at the end of your questioning. Be patient and let the judge do this.

## III. Cross-Examination (Questioning the Other Party's Witnesses)

Cross-examination is the opportunity one party gets to question witnesses called by another party. If the witness testifies to a fact, but you have a statement and/or a document that shows that the witness's testimony is wrong or biased, you can use your evidence to question the witness about the accuracy of his or her testimony. This process is called "impeaching the witness."

You are not required to cross-examine a witness if you do not want to. However, if you decide to, remember that your cross-examination should have a purpose. For example, are you trying to show that the witness is biased? If so, you might ask the witness a question to show that he or she has a close relationship (i.e., friends) with the other side. Or, you might try to show that the witness incorrectly testified about a date by showing the witness an email that has the correct date.

Also, a party is typically not allowed to ask questions which do not pertain to the facts the witness testified about in his or her direct examination. If you do ask questions that are outside the scope of the direct examination, it is possible the other side may object to your question and the judge may not allow it to be answered.

During the cross-examination itself, you should do the following:

- **Keep it simple - Ask one question at a time.** Allow time for the witness to answer before moving on to the next question.
- **Be polite and listen carefully to the answers.** You may learn new information that will require follow-up questions.

During cross-examination, unlike direct examination, you are permitted to ask leading (i.e., yes or no) questions, which normally do not allow the witness the opportunity to explain.

In some cases, the judge may allow a re-direct examination. A redirect examination allows the party which originally brought the witness to try and clarify or reverse any testimony given by during their cross-examination. If your witness says something that hurt your case or was unexpected, you may want to “rehabilitate” the witness by asking follow-up questions. This will give the witness an opportunity to clarify or explain anything that came up in the cross examination.

#### IV. Document Evidence: How to Present Document Evidence at Your Hearing

You may have documents supporting your side of the story that you want to admit into evidence. As with other forms of evidence, there are rules that you must follow to have documents admitted as evidence. Ultimately, the judge decides what can be introduced as evidence. If you disagree with the judge's decision, you may object. Always remain respectful.

Some agencies require you to submit the documents *before* the hearing - to allow other party to object. Other agencies will allow both sides to exchange the documents at beginning of hearing. In these instances, the judge will decide whether or not the evidence can be used in the proceeding *before* witness questioning starts. Read your hearing or pre-hearing notice carefully to see if your agency has such a rule.

In some instances, you will be required to introduce the document only with witness testimony, and you must "lay a foundation." This means you will have to prove that the witness created the document and can testify that it is accurate, or has some other relevant personal knowledge about a document before it can be admitted into evidence.

To lay a foundation, you should take the following steps: (1) If you have not already exchanged marked exhibits, ask the judge to make the exhibit as exhibit 1, 2, 3 . . . (2) Give the judge a copy and the other party a copy. (3) Approach the witness and ask him or her to identify the document and ask if the document is

what it appears to be. You may also need to ask the witness how the witness knows that the document is what it appears to be. (4) Finally, ask the judge to admit the document into evidence.

## V. Closing Arguments

At the end of the case, some judges allow each side to make a closing argument -- a statement designed to persuade the judge why, under the law and facts presented, you should win your case.

As with opening statements, you should keep it brief (i.e., no longer than 5 minutes), and you should focus on your evidence and what it proves. Use the chart you develop from the "Assembling your Evidence" section above to guide you.

## VI. Specific Agency & Court Information

- D.C. Small Claims Court: Sit on the left side of the courtroom as close as possible to the courtroom clerk. The hearing begins with the clerk calling attendance for all of the scheduled cases. After the roll call, many parties are required to get in line to speak with the courtroom clerk before the Judge takes the bench (or comes into the hearing room). The line can get lengthy, so get in it as quickly as possible when the roll call is over if you need to speak with the clerk. The parties will then be required to go to mediation with a mediator assigned by the courtroom clerk. *See EJC's Mediation* handout for advice on this step. If the case does not settle, the judge will call you to trial. The judge is not bound by the rules of procedure or evidence. The process is supposed to be simplified to make it easy for the parties to proceed without lawyers. The judge will either render a decision immediately or will notify the parties by mail at a later date.
- Equal Employment Opportunity Commission (EEOC): The judge has the power to decide the order in which evidence will be presented, limit the number of witnesses where testimony would be repetitive, and limit the scope of the hearing if he or she determines that some issues are not genuinely in dispute. The judge generally must issue a decision within 180 days of receiving the complaint file from the agency.
- D.C. Office of Administrative Hearings (OAH): The employer has the burden of proof in unemployment compensation appeals, no matter who appealed the case, which generally means the employer should present its evidence first. The judge will tell you when he or she is ready to hear

your evidence. A decision is supposed to be issued within 60 days of the hearing request.

- D.C. Office of Employee Appeals (OEA): The employer has the burden of proof in termination cases before OEA, which means the employer generally should present its evidence first. Hearings are conducted in an orderly manner but not necessarily with the formalities of a trial. The decision may be made orally at the end of the hearing, but in all cases must be made within 120 business days.
- D.C. Office of Risk Management (ORM): Hearings are generally conducted in the same manner as trials, with opening and closing statements. Doctors will generally not appear in person, but their reports will be accepted into evidence as their testimony. A decision, called a recommended Final Compensation Order (FCO), is supposed to be issued within 30 days of the close of the hearing, but it can actually take 6 months to a year to get a decision.
- D.C. Office of Workers' Compensation (OWC): The judge has the power to determine hearing procedures, including the order in which evidence is presented. A decision is supposed to issue within 20 working days, but in practice it can take 3 months to a year.
- D.C. Office of Wage & Hour (OWH): The initial hearing is called a "Fact-Finding Conference," which is informal and occurs about two weeks after the claim is filed. Employers are asked to bring their records; sometimes employers appear over the telephone and fax in their documentation to the office. A decision will be issued at the end of the Conference.

### **Some Final Tips**

- **Dress appropriately.** The judge or jury will not view your case as favorably if you don't show respect by dressing formally. This means no tennis shoes, jeans, t-shirts, stains, or revealing outfits.
- **Contact your witnesses.** The evening before the hearing, remind them to arrive well before the hearing begins and to dress appropriately.
- **Bring the phone numbers of witnesses.** If they do not show up, the judge might want to call them.
- **Be on time.** If you are not in court when the case is called and the other party is present, you might have a default judgment entered against you.
- **Request an interpreter** far in advance of your hearing date. If you do not know who to ask, ask the court clerk where you filed your original paperwork about getting an interpreter for the hearing.

- **If you cannot make the hearing date** that the agency or court has set for you, contact the agency or court ASAP. If you wait to the day of or the day before, it may be too late to get an extension. If you miss your hearing date, your case may be dismissed, and you may lose your right to another hearing.

For a detailed description on how to represent yourself in D.C. Superior Court go to [http://www.dccourts.gov/dccourts/docs/civil\\_actions\\_handbook.pdf](http://www.dccourts.gov/dccourts/docs/civil_actions_handbook.pdf) or visit the D.C. Employment Justice Center's Workers' Rights Clinic and ask for a copy of the Superior Court of the District of Columbia Civil Actions Information Handbook.

*For more information about your workplace rights come to one of the Workers' Rights Clinic run by the D.C. Employment Justice Center from 6:00 p.m. – 7:30 p.m. on Wednesdays at Bread for the City, NW (1525 7<sup>th</sup> Street, NW, between P and Q Streets, NW, near the Howard Univ/Shaw Metro stop on the Green Line) or from 3:00 p.m. – 4:30 p.m. on Mondays at Bread for the City, SE (1640 Good Hope Road, SE). No appointment is necessary, and you may call (202) 828-9675 for additional information about the clinic. You can also visit the D.C. Employment Justice Center website at [www.dcejc.org](http://www.dcejc.org).*

***This publication is intended to provide general information regarding legal rights relating to employment in D.C. metropolitan area. Because laws and procedures change, the D.C. Employment Justice Center cannot ensure that the information is current nor can we be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights.***

**DC Employment Justice Center**  
727 15TH STREET, NW, SECOND FLOOR, WASHINGTON, DC 20005  
PHONE: 202.828.WORK      FAX: 202.828-9190      [www.dcejc.org](http://www.dcejc.org)      [justice@dcejc.org](mailto:justice@dcejc.org)