

CHAPTER 112**OCCUPATIONAL SAFETY AND HEALTH REVIEW
COMMISSION RULES OF PROCEDURE****Authority**

N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-32 and 34:6A-42(c).

Source and Effective Date

R.2003 d.439, effective October 10, 2003.
See: 35 N.J.R. 3437(a), 35 N.J.R. 5121(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, expires on April 8, 2009. See: 40 N.J.R. 6536(a).

Chapter Historical Note

Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, was adopted as R.1988 d.438, effective September 6, 1988. See: 20 N.J.R. 1165(a), 20 N.J.R. 2301(a).

Pursuant to Executive Order No. 66(1978), Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, was readopted as R.1993 d.474, effective August 27, 1993. See: 25 N.J.R. 3059(a), 25 N.J.R. 4498(b).

Pursuant to Executive Order No. 66(1978), Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, was readopted as R.1998 d.456, effective August 14, 1998. See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a). As a part of R.1998 d.456, Subchapter 4, Pre-Hearing Conference, Subchapter 5, Hearings, Subchapter 6, Post Hearing Procedures, and Subchapter 7, Miscellaneous Issues, were repealed and new Subchapters 4, 5, and 6 were adopted, effective September 8, 1998.

Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, was readopted as R.2003 d.439, effective October 10, 2003. See: Source and Effective Date.

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SUBCHAPTER 7. (RESERVED)**SUBCHAPTER 1. GENERAL PROVISIONS****12:112-1.1 Purpose**

The purpose of this chapter is to set forth the appeal procedures of the New Jersey Public Employees Occupational Safety and Health Review Commission.

Amended by R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Substituted "appeal" for "hearing" at the beginning of the sentence.

12:112-1.2 Scope

This chapter shall govern all matters, including uncontested cases, before the Review Commission. Contested cases transmitted to the Office of Administrative Law shall be governed by N.J.A.C. 1:1.

Amended by R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote the paragraph.

12:112-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

"Chairperson" means the Review Commission member designated by the Governor to serve as chairperson.

“Commissioner” means the Commissioner of the New Jersey Department of Labor or his or her designee.

“Complainant” means the employer, employee or employee representative who has filed a Notice of Contest.

“Day” means a calendar day.

“Employee” means any public employee, any person holding a position by appointment or employment in the service of an “employer” as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., shall be excluded from the coverage of the Act.

“Employee representative” means a “representative” as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

“Employer” means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State except any bi-state agency; or
2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

“Non-party” means a person or entity who participates in the Review Commission proceeding as a witness or in amicus curiae capacity.

“Notice” means Notice of Contest.

“Order to comply” means a written directive issued by the Commissioner to an employer as set forth in N.J.S.A. 34:6A-41.

“Party” means either the complainant who is the employer, employee or employee representative who has filed a Notice of Contest with the Commissioner or the Commissioner who is the respondent.

“Proceeding” means any proceeding before the Review Commission.

“Review Commission” means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42.

“Working day” means any Monday through Friday but shall not include Saturday, Sunday, any Federal holiday or

any State holiday. In computing 15 working days, the day of receipt of any notice shall not be included.

“Workplace” means a place where public employees are assigned to work.

Recodified from N.J.A.C. 12:112-1.4 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Deleted “Agency” and “Secretary” definitions; added new “Chairperson”, “Complainant”, “Employee representative”, and “Notice” definitions; and rewrote “Party” and “Workplace”. Former N.J.A.C. 12:112-1.3, Validity, was repealed.

12:112-1.4 Computation of time

(a) In computing any period of time prescribed or allowed in this chapter, the day from which the designated period begins to run shall not be included.

(b) The last day of the period so computed shall be included unless it is a Saturday, Sunday, Federal holiday, or State holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal holiday, or State holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, Federal holidays and State holidays shall be excluded in the computation.

Recodified from N.J.A.C. 12:112-1.7 by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Former N.J.A.C. 12:112-1.4, Definitions, was recodified to N.J.A.C. 12:112-1.3.

12:112-1.5 Extension of time

Requests for extensions of time for the filing of any document shall be in writing, addressed to the Chairperson of the Review Commission and received in advance of the date on which the document is due to be filed. Extensions of time shall be honored for good cause.

Recodified from N.J.A.C. 12:112-1.8 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Substituted “Chairperson” for “Secretary”. Former N.J.A.C. 12:112-1.5, Quorum, was repealed.

12:112-1.6 Address of record

(a) The initial document filed by any party or non-party shall contain his or her name, address, and telephone number. Any change in such information shall be communicated promptly in writing to the Review Commission and to all other parties and non-parties.

(b) A party or non-party who fails to furnish such information shall be deemed to have waived his or her right to notice and service under this chapter.

Recodified from N.J.A.C. 12:112-1.9 and amended by R.1998 d.456,
effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).
Former N.J.A.C. 12:112-1.6, Voting, was repealed.

12:112-1.7 Service and notice

(a) At the time of filing documents, a copy shall be served by the filing party on every other party or non-party.

(b) Service upon a party or non-party who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by first class mail, by personal delivery or by electronic communication. Service is deemed effected at the time of mailing, at the time of personal delivery or at the time of electronic transmittal.

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the document.

(e) When the complainant is an employer, the employer shall immediately post a copy of the Notice of Contest, where the written order to comply is required to be posted or, a notice in the following form:

(Name of employer)

This employer has been cited by the Commissioner of Labor for violation of the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. The written order to comply has been contested and will be reviewed by the Occupational Safety and Health Review Commission.

(f) When the complainant is an employee or an employee representative, he or she shall serve a copy of the Notice of Contest on the employer at the time of transmittal to the Commissioner.

(g) When a Notice of Contest is scheduled for consideration by the Review Commission, a copy of the notice of the meeting of the Review Commission shall be posted by the employer at or near the place where the written order to comply is required to be posted.

(h) Where posting is required by this section, such posting shall be maintained until the commencement of the meeting or until earlier disposition.

Recodified from N.J.A.C. 12:112-1.10 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote (c) and (e); added a new (f); rewrote and recodified former (f) as (g); and recodified former (g) as (h). Former N.J.A.C. 12:112-1.7, Computation of time, was recodified to N.J.A.C. 12:112-1.4.

12:112-1.8 Filing

(a) Prior to the assignment of a case to the Review Commission, all papers shall be filed with the Commissioner at PO Box 386, Trenton, New Jersey 08625-0386. Subsequent to the assignment of the case to the Review Commission, and before the issuance of its decision, all papers shall be filed with the Review Commission at the above address.

Subsequent to the issuance of the decision of the Review Commission, all papers shall be filed with the Chairperson.

(b) Unless otherwise authorized, all filing shall be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

Recodified from N.J.A.C. 12:112-1.11 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote (a); and in (b), substituted "authorized" for "ordered". Former N.J.A.C. 12:112-1.8, Extension of time, was recodified to N.J.A.C. 12:112-1.5.

12:112-1.9 Consolidation

Cases may be consolidated upon the motion of the Chairperson or the Review Commission or upon the motion of any party, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as the administration of the Act require.

Recodified from N.J.A.C. 12:112-1.12 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote the paragraph. Former N.J.A.C. 12:112-1.9, Address of record, was recodified to N.J.A.C. 12:112-1.6.

12:112-1.10 Severance

Upon the motion of the Chairperson or the Review Commission, or upon the motion of any party, the Chairperson or the Review Commission may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Recodified from N.J.A.C. 12:112-1.13 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote the paragraph. Former N.J.A.C. 12:112-1.10, Service and notice, was recodified to N.J.A.C. 12:112-1.7.

12:112-1.11 (Reserved)

Recodified to N.J.A.C. 12:112-1.8 by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Filing".

12:112-1.12 (Reserved)

Recodified to N.J.A.C. 12:112-1.9 by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Consolidation".

12:112-1.13 (Reserved)

Recodified to N.J.A.C. 12:112-1.10 by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Severance".

SUBCHAPTER 2. PARTICIPATION IN MATTERS BEFORE THE REVIEW COMMISSION

12:112-2.1 Non-party participation

(a) A petition for a non-party to participate as a witness or in an amicus curiae capacity shall be filed at least 10 days before the commencement of the meeting of the Review Commission.

(b) The petition shall set forth the interest of the non-party in the matter before the Review Commission and show that the participation of the non-party will assist in the determination of the issues in question and that the participation of the non-party will not unnecessarily cause delay.

(c) The Chairperson or the Review Commission may grant a petition for participation of a non-party to such an extent and upon such terms as the Chairperson or the Review Commission determines.

Amended by R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

In (a), substituted "meeting of" for "hearing before" and deleted "except as provided in (c) below" at the end of the sentence; in (b), substituted "matter before the Review Commission" for "proceeding", inserted "cause" preceding "delay", and deleted "the proceeding" from the end of the sentence; and in (c), inserted references to Chairperson.

12:112-2.2 Party and non-party representatives

(a) When a meeting is held, any party or non-party may appear in person or through a representative.

(b) A representative of a party or non-party shall be deemed to control all matters respecting the interest of such party or non-party in the matter before the Review Commission.

(c) Nothing contained herein shall be construed to require any representative to be an attorney at law.

Amended by R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

In (a), added "When a meeting is held, any" at the beginning of the sentence; and in (b), substituted "matter before the Review Commission" for "proceeding".

12:112-2.3 Appearances of parties and non-parties

(a) A representative of a party or non-party shall indicate such by signing the first document filed on behalf of the party or non-party in accordance with (b) below, or thereafter by filing a notice of representation in accordance with (c) below.

(b) If the first document filed on behalf of a party or non-party is signed by a representative, the representative shall be recognized as representing that party or non-party. No separate notice of representation is necessary.

(c) Where a representative has not previously appeared on behalf of a party or non-party, he or she shall file a notice of representation with the Chairperson. The notice of representation shall be signed by the representative.

Amended by R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

In (a) and (b), substituted references to notices of representation for references to entering appearances; and in (c), substituted "Chairperson" for "Secretary" and references to notices of representation for references to entering appearances.

12:112-2.4 Conduct of parties

(a) All representatives appearing before the Review Commission shall comply with the letter and spirit of ethical conduct.

(b) If an attorney or other representative practicing before the Review Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Review Commission, the Review Commission may, after reasonable notice and an opportunity to show cause to the contrary, take any appropriate disciplinary action, including suspension or disbarment from practice before the Review Commission.

New Rule, R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

12:112-2.5 Withdrawals of parties and non-parties

(a) Any counsel or representative of record desiring to withdraw his or her representation shall file a motion with the Chairperson or the Review Commission requesting leave therefor, and showing that prior notice of the motion has been given by him or her to his or her client or counsel or representative, as the case may be.

(b) The motion of counsel or representative to withdraw may, in the discretion of the Review Commission, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

Recodified from N.J.A.C. 12:112-2.4 and amended by R.1998 d.456, effective September 8, 1998.
See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

In (a), substituted "representation" for "appearance" and inserted a reference to Chairperson; and in (b), inserted "or representative" at the beginning of the sentence.

SUBCHAPTER 3. NOTICES AND MOTIONS

12:112-3.1 Title of cases

(a) Cases initiated by a Notice of Contest shall be titled: (Name of Contestant), Complainant versus Commissioner of Labor, Respondent.

(b) The titles listed in (a) above shall appear at the left upper portion of the initial page of any document filed.

(c) The initial page of any document shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Review Commission.

Amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote (a).

12:112-3.2 Signing of motions

(a) Motions shall be signed by the filing party or non-party or their representative. The signature of a representative constitutes a representation by him or her that he or she is authorized to represent the party or non-party on whose behalf the action is filed.

(b) The signature of a representative, party or non-party also constitutes a certification that he or she has read the motion, or other paper, that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is arranged by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

In (a) and (b), inserted references to non-parties.

12:112-3.3 Notices of Contest

(a) Immediately upon receipt of notification that the complainant contests the written order to comply issued under the Act, the Commissioner shall notify the Review Commission of the receipt in writing and shall promptly furnish to the Chairperson of the Review Commission copies of any documents or records filed by the complainant and copies of all other documents or records relevant to the contest.

(b) The complainant at the time of the filing of the Notice shall provide detailed reasons for filing the Notice of Contest of an order to comply and the specific relief requested. Further, the Notice shall be accompanied by a copy of the order to comply at issue.

(c) The complainant shall provide, within the time frame specified, additional information that is requested by the Chairperson or the Review Commission.

Amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Rewrote (a); and inserted new (b) and (c).

12:112-3.4 Failure to obey rules

(a) When any party, non-party or representative has failed to proceed as provided by these rules or as required

by the Chairperson or the Review Commission, he or she may be declared to be in default either:

1. On the initiative of the Chairperson or the Review Commission, after having been afforded an opportunity to show cause why he or she should not be declared to be in default; or

2. On the motion of a party, non-party or representative.

(b) After a finding of default, the Review Commission, in its discretion, may enter a decision against the defaulting party or non-party or strike any document not filed in accordance with these rules.

(c) For reasons deemed sufficient by the Review Commission and upon motion expeditiously made, the Review Commission may set aside a sanction imposed under (b) above.

Recodified from N.J.A.C. 12:112-3.10 and amended by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

In (a), inserted references to representative, non-party, and Chairperson. Former N.J.A.C. 12:112-3.4, Employer contest, was repealed.

12:112-3.5 (Reserved)

Repealed by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Complaints".

12:112-3.6 (Reserved)

Repealed by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Content of the answer".

12:112-3.7 (Reserved)

Repealed by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Statement of position".

12:112-3.8 (Reserved)

Repealed by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Motions without conference consideration".

12:112-3.9 (Reserved)

Repealed by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Motions and request".

12:112-3.10 (Reserved)

Recodified as N.J.A.C. 12:112-3.4 by R.1998 d.456, effective September 8, 1998.

See: 30 N.J.R. 1893(b), 30 N.J.R. 3247(a).

Section was "Failure to obey rules".

SUBCHAPTER 4. REVIEW OF NOTICE OF CONTEST

12:112-4.1 Method of review

Within 20 days of receipt of the Notice, the Chairperson of the Review Commission shall determine whether a Notice was timely filed. If so, the Review Commission shall determine whether a review and decision shall be rendered on a written record or whether resolution can only be obtained at a hearing. Normally, a hearing shall be required only where the Review Commission finds that a material and controlling dispute of fact exists.

12:112-4.2 Written record review

(a) When the Review Commission determines that a matter shall be decided on the written record, it shall provide the parties with a 20-day period to submit written arguments and documentation in support of their position.

(b) All arguments and documentation submitted by a party shall be simultaneously served on all other parties. Evidence of such service shall be provided by the party making the submission.

(c) Failure by the complainant to provide additional information requested may result in the Review Commission's dismissal of the appeal.

(d) Upon closure of the 20-day period, one additional five working day extension of the comment period may be provided at the request of any one of the parties. Substantial justification shall be required to obtain such extension.

(e) Any party or non-party may review the file at the Division of Public Safety and Occupational Safety and Health, Department of Labor, during regular business hours.

(f) The Review Commission shall render and notify all parties of its final determination within a reasonable time period.

12:112-4.3 Burden of proof

The burden of proof in any proceeding before the Review Commission shall rest with the party filing the Notice of Contest.

12:112-4.4 Stay and interim relief requests

(a) Upon the filing of a Notice, a party, non-party, or representative may petition the Chairperson for a stay or other relief pending final decision of the matter.

(b) A request for stay or interim relief shall be in writing, signed by the petitioner or his or her representative and shall include detailed supporting information for the request.

(c) The following factors shall be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioners;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Likelihood of substantial injury to employees or others if the request was not granted; and
4. The public interest.

(d) The filing of a petition for interim relief shall not stay administrative proceedings or processes.

(e) Each party shall serve copies of all materials submitted on all other parties.

(f) The Chairperson shall submit the request to the Review Commission for decision.

(g) Following a final administrative decision on a Notice by the Review Commission, and upon the filing of an appeal from the decision to the Appellate Division of the Superior Court, a party, non-party, or their representative may petition the Chairperson for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above.

12:112-4.5 Reconsiderations

(a) A party, non-party, or representative may petition the Review Commission for reconsideration of any decision that it renders.

(b) A petition for reconsideration shall be in writing signed by the petitioner, or his or her representative, and shall show the following:

1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

(c) The petitioner shall serve copies of all materials submitted on all other parties in accordance with N.J.A.C. 12:112-1.7.

12:112-4.6 Settlements

(a) At the request of any party, or on its own motion, the Review Commission may cause an informal conference to be held for the purpose of attempting to effectuate a settlement of any or all of the issues. All parties shall be afforded an opportunity to participate in any such conference.