**Section 350.500 Petition for Variance from Standards**

a) General

*The Director may grant a temporary or permanent variance from any State occupational safety and health standard upon application by a public employer*. (Sec. 40 of the Act) The petition shall be filed by the employer as soon as practicable when the employer finds that compliance is unable to be achieved. Any variance from State health and safety standards may only have future effect.

b) The petition for a variance from a standard shall be granted if it meets the requirements of this Section and establishes:

1) The reasons for the employer's inability to achieve compliance by the required date, such as the unavailability of necessary professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the effective date;

2) A description of interim steps being taken to safeguard the employees against the hazard during the period of noncompliance;

3) The details of an effective program for coming into compliance as quickly as practicable; and

4) A statement certifying that the employees have been notified of the petition and that a copy of the petition has been posted in a conspicuous location in the workplace for a period of at least 10 working days. This statement must summarize the application, specify where a copy may be examined, and describe how the employees were informed and their rights to petition the Director for a hearing.

c) Affected employees or their authorized representatives may participate in the hearing on the petition by filing a request to participate with the Department within 10 working days after the date of the posting of the petition or the service of the petition.

d) Within 15 working days after receipt of the petition, the Department shall schedule a hearing on the petition, appoint an impartial hearing officer to conduct the hearing, and serve notice of the time and location of the hearing on the employer and any employees and employee representatives who have filed a request to participate in the hearing. The hearing shall be held within 45 calendar days after receipt of the petition.

e) The Department shall fully consider the petition and any testimony presented by the employer, employees, and employee representatives.

1) The requested variance shall be granted when the Department finds that:

A) the employer has made and is making a good faith effort to achieve compliance (e.g., ordering necessary materials and designing, planning and scheduling alterations);

B) that the health and safety of the employees is being safeguarded during the noncompliance period (such as by the use of barriers, prohibition of access to the hazardous area, or posting of warning notices); and

C) that the noncompliant condition is due to circumstances beyond the control of the employer.

2) If the Department finds that the conditions of subsection (e)(1)have not been met, the variance shall be denied.

f) If the employees or their authorized representatives do not file a request to participate or otherwise raise objections to the petition and the Department finds that the information contained in the request for a variance meets the conditions set forth in subsection (e), the Department shall issue the requested variance without holding a hearing.

g) No order for a temporary variance may be in effect for longer than the period needed by the employer to achieve compliance or one year, whichever is shorter, except that such a variance may be renewed not more than twice, so long as the requirements of this Section are met and if an application for renewal is filed at least 90 calendar days prior to the expiration date of the variance. No interim renewal of a variance may remain in effect for longer than 180 calendar days.

h) Application. An application for a temporary order shall contain:

1) The name and address of the applicant;

2) The address of the affected establishments;

3) A statement establishing that the applicant;

A) is unable to comply with a standard by its effective date because of:

i) the unavailability of professional or technical personnel;

ii) the unavailability of materials and equipment needed to come into compliance with the standard; or

iii) the necessary construction or alteration of facilities cannot be completed by the effective date;

B) is taking all available steps to safeguard employees against the hazards covered by the standard; and

C) has an effective program for coming into compliance with a standard as quickly as possible.

4) The standard or portion of a standard from which the employer seeks the variance;

5) A representation by the employer, along with qualified support, of the reasons for not being able to comply with the standard;

6) A statement of when, with specific dates, the employer expects to comply with the standard; and

7) A certification that the employer has informed the employees and their authorized representatives of the application and their right to petition the Department for a hearing, and has provided them a copy of the posting.

i) Permanent Variance

1) The Director may issue an order for permanent variance from a safety standard when:

A) notice has been given to affected employees and the employees have been afforded the opportunity to participate in the hearing process; and

B) a preponderance of the evidence demonstrates that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide employment and places of employment as safe and healthful as those that would be produced by compliance with the standard.

2) The order may be modified or revoked upon application by an affected employer or affected employee at any time after 6 months following its issuance.

j) Modification or Revocation

1) An affected employer or an affected employee may apply in writing to the Director for a modification or revocation of a rule or order. The application shall contain:

A) The name and address of the applicant;

B) A description of the relief sought;

C) A statement setting forth with particularity the grounds for relief;

D) If the applicant is an employer, a certification that the applicant has informed affected employees of the application by:

i) Giving a copy of the application to the authorized employee representative;

ii) Posting, at the place or places where the notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

iii) Other appropriate means.

E) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

F) Any request for a hearing, as provided in this Part.

k) The Director may proceed to modify or revoke a rule, in accordance with the Illinois Administrative Procedure Act [5 ILCS 100], or to modify or revoke an order issued under Section 40 of the Act. In that event, the Director shall cause to be published in the Illinois Register a notice of this intention, affording interested persons an opportunity to submit written data, views or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take other appropriate action to notify affected employees. Any request for a hearing shall include a short and plain statement of:

1) how the proposed modification or revocation would affect the requesting party; and

2) what the requesting party would seek to show on the subjects or issues involved.

l) Defective Applications

1) If an application for variance does not conform to the applicable portions of this Section, the Director may deny the application.

2) Prompt notice of denial of an application shall be given to the applicant.

3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

4) A denial of an application pursuant to this subsection (l) shall be without prejudice to the filing of another application.

m) Adequate Applications

1) If an application has not been denied pursuant to subsection (l), the Director shall cause to be published in the Illinois Register a notice of the filing of the application.

2) A notice of the filing of an application shall include:

A) The terms or an accurate summary of the application;

B) A reference to the Section of the Act under which the application has been filed;

C) An invitation to interested persons to submit, within a stated period of time, written data, views, or arguments regarding the application; and

D) Information to affected employers and employees covered in the application of any right to request a hearing on the application.

n) Request for Hearings on Applications

1) Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Director a request for a hearing on the application.

2) Contents of a Request for a Hearing. A request for a hearing filed pursuant to this Section shall include:

A) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

B) A specification of any statement or representation in the application that is denied and a concise summary of the evidence that would be adduced in support of each denial; and

C) Any views or arguments on any issue of fact or law presented.

3) All hearings held pursuant to this Section will abide by IDOL's Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120).

(Source: Amended at 46 Ill. Reg. 3518, effective February 15, 2022)