

MAINE PAID FAMILY & MEDICAL LEAVE



HOW TO PREPARE FOR AN APPEAL HEARING

Our goal is that all appeals conclude with the parties feeling they had a fair opportunity to present their case.



If your hearing is in person, please be aware the Maine Department of Labor is a fragrance free zone. In consideration of chemically sensitive individuals, please refrain from wearing any scent bearing products to your hearing.

Employers and Claimants have the right to appeal certain decisions. **Employers** can appeal if they disagree with a decision of the Bureau such as charging a fine or penalty; denial or revocation of a private plan substitution; or findings that a claim of undue hardship is unreasonable. **Claimants** can appeal if they disagree with the State's Claims Administrator or an Employer's decision to deny, in whole or in part, a claim for Paid Family and Medical Leave ("PFML") benefits. This guide will give you basic information about your right to appeal and about the appeals process. This guide will also help you in preparing for your hearing.

The Structure of the Hearing

An appeal hearing is conducted by an impartial Hearing Examiner. Hearings are virtual hearings but you can request that the hearing be by telephone or in person, if necessary. The purpose of the hearing is to decide, based on the information provided at the hearing, whether the decision being appealed should be upheld or denied. The person appealing, whether an employer or claimant, is called the "appellant." In addition to the person appealing, others who have an interest in the outcome may participate and are called "interested parties."

Appellants can be an employer who disagrees with a decision of the Department or a claimant who disagrees with the outcome of their claim for benefits. Interested parties might be the Department, the employer, or the claims administrator for the employer or Department.

It is the job of the Hearing Examiner to provide a fair hearing. A fair hearing means an impartial Hearing Examiner will decide the case after considering the testimony of all witnesses and any documents the parties offer. The hearing will start with the Hearing Examiner explaining how the hearing will proceed and answer any questions you may have. It is important to make sure you understand the process and have the time you need to present information that is relevant to your case. After the hearing, the Hearing Examiner will issue a written decision. The decision will either affirm, modify, or set aside whatever decision is being appealed.

The Scheduling of the Appeal Hearing – *You must attend*

After you file your appeal, you will receive a **Notice of Hearing** stating when the hearing will take place. Your hearing will be a virtual hearing but you can request that the hearing be changed to a telephone or in person hearing if you are unable to participate virtually. Carefully note the **Manner, Date, Time** and, if in person, **Location** of the hearing.

You must make every effort to attend the hearing. If you do not, your case may be dismissed which is called a "default decision." If there is good cause and you cannot attend the hearing, let us know no later than three (3) business days before the scheduled hearing by emailing Appeals.DOLPFML@maine.gov asking to postpone the hearing. Good cause is defined in PFML Rule ch. 1(I)(13). The definition includes, but is not limited to:

- A. A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application for benefits or a request to appeal;
- B. A demonstrated inability to reasonably access a means to file an application or to request an appeal in a timely manner, such as an inability to file an application or request to appeal due to a natural disaster or a significant and prolonged closure of the Department's offices;
- C. A serious health condition of a family member that requires the unanticipated and prolonged presence of the individual filing an application or request to appeal and that prevents the individual from timely filing an application for benefits or a request to appeal;
- D. Physical, intellectual, linguistic or other limitations including limited understanding of English that prevents the timely filing of an application or request to appeal; or
- E. Circumstances beyond the control of the individual filing the application or requesting the appeal that made it impossible to timely file the application or request to appeal despite making a reasonable effort to do so.

Do not assume your request is granted. The hearing is not postponed unless you have received confirmation from the Hearing Examiner in writing that says it is postponed.

Preparing for the Hearing

Gather Your Evidence

This appeal hearing is an opportunity to present your case. Prepare for it carefully and carefully. Make sure you know what you want to say when you testify and gather all the documents you want the Hearing Examiner to consider.

After you receive the Notice of Hearing, you will receive an email that include a **Prehearing Notice**. The Prehearing Notice provides the Zoom link for the virtual hearing; instructions for using Zoom; and important information about preparing for the hearing.

Paid Family and Medical Leave appeals are heard by an individual who did not participate in any prior decisions or review. This is done to keep your hearing impartial and independent of the prior decision you are appealing. The Hearing Examiner who conducts the hearing is not bound by the prior decision and will make their decision only on the evidence collected in advance of the hearing and testimony presented at the hearing.

Letters, notices, or other evidence that the Department or the Department's claims administrator relied on in making their decision will be provided to you. If you have any documents you want

considered that could be helpful to your case, you will need to file those documents at least five (5) business days **(do not count weekends or holidays)** before the date of your hearing. Copies of these records need to be given to any interested parties by you, too. All of these documents and any documents interested parties provide, along with any testimony taken at the hearing, is the only evidence the Hearing Examiner may consider when reaching their decision so include everything that is relevant to why you disagree with the decision you are appealing.

Witnesses

Witnesses should have direct, personal knowledge of the facts relating to your appeal. Make sure these witnesses will attend the hearing to present their information. Written statements might not be allowed into evidence or, if they are, might not be given as much weight as live testimony. You will need to identify your witnesses and provide their email address and telephone number when you send in your documents. That way, we can provide witnesses with the link for the virtual hearing.

Sometimes witnesses do not want to attend the hearing and testify. If you ask someone to be a witness and they refuse, you can ask that they be subpoenaed. This means they will be required by law to appear and testify at the hearing. You may also request a subpoena to require witnesses to provide relevant documents that you cannot obtain on your own. Subpoena requests must be submitted in writing by email or fax. Your request must include the names and addresses of witnesses or people who have the documents you need. To make sure the Hearing Examiner has time to process it, your request should be received by the Appeals Unit at least seven (7) business days prior to your hearing date.

The Hearing

Be Prompt

It is important that you are ready and prepared to go forward with your hearing at the scheduled time. If you are the appealing party and you do not log on for the virtual hearing, are not available when called for a telephonic hearing, or are not present for an in person hearing on the scheduled day and time, your appeal will be dismissed. If you do not appear and you are an interested party (nonappealing party), the hearing will continue without you. **Your failure to appear may result in a denial of all further rights of appeal.**

The Hearing Procedure

The hearing is like a court trial, but not as formal. The appeal hearing is controlled by the Hearing Examiner. This is done to make sure each person has the same opportunity to present their case. For example, the Hearing Examiner will make sure only one person speaks at a time. This way the Hearing Examiner will not miss any relevant information that a party wants to have considered.

The hearing will begin with the Hearing Examiner explaining what will happen during the hearing. Witnesses will be kept in a separate “virtual” room during the hearing until it is time for them to testify.

The Hearing Examiner will answer any questions you might have about the hearing process. Documents that were filed prior to the hearing will be identified and the Hearing Examiner will ask if anyone objects to entering your documents and the documents filed by any interested party into evidence. Sometimes documents are admitted even though you object, but your objection will be noted for the record.

The Hearing Examiner will only use information from the record and from testimony presented at the hearing in reaching their decision. All testimony is given under oath or affirmation, and the hearing will be recorded.

The Hearing Examiner will begin receiving testimony by swearing in the first witness, usually either the employer or claimant that is appealing. The Hearing Examiner will allow the witness to tell their story, give all their relevant information, and may ask questions to clarify the testimony.

If the witness is not the appealing or interest party, the party who requested the witness’s testimony will then have the opportunity to ask their own questions. Finally, the opposing party will be given the opportunity to “cross examine,” or question the witness. The next witness is then called and the same procedure is followed.

When one party has finished presenting their case, the opposing party will then be given the opportunity to present their case. The Hearing Examiner will close the hearing when there is no additional information or evidence to present. Most hearings will likely last between 30 and 60 minutes.

If you need clarification or have questions at any time during the hearing, **ask the Hearing Examiner for assistance**. Finally, it is important to remember that the hearing is held to gather facts, not to get into an argument. Arguing or getting angry during a hearing prevents you from clearly stating the facts of your case.

Attorney or Third Party Representation

You have the right to hire an attorney or another person who you authorize to represent you at your hearing. However, you are not required to have an attorney or other representative at the appeal. If you do have an attorney or third party representing you, you need to tell the Bureau who that person is and provide their contact information. The representative will need to confirm that they have agreed to represent you. The Hearing Examiner will make sure all parties are given an opportunity to present their case. It is the Hearing Examiner’s job to make sure each party receives a fair and unbiased hearing, whether or not he/she chooses to have representation.

If you do have legal representation, contact your attorney immediately to allow them ample time to prepare for the hearing. It is your responsibility to notify them of the time and place of the hearing and to pay any fees charged for such representation.

Accommodations

Please notify us in advance if you need services that will assist you in presenting the facts at your hearing. These may include, but are not limited to, accommodations for people with disabilities, foreign language interpreters for people whose first language is not English, or sign language interpreters for people who are deaf or hard of hearing. We will make the necessary arrangements for your hearing.

Virtual/Zoom and Telephone Hearings

Telephone and Virtual/Zoom hearings allow parties to participate in a hearing without the expense, time or possible hazard of traveling to a central hearing site. Paid Family and Medical Leave hearings are virtual hearings.

Telephone hearings can be requested, and are only scheduled by the Hearing Examiner, after consideration of issues such as the number of witnesses and documents, the length of the potential hearing, the distance to a central hearing site, and the safety of the participants.

In any type of hearing, your testimony and that of your witness(es) is taken, under oath or affirmation. All interested parties will be present at the virtual or telephone hearing, similar to a conference call. The Hearing Examiner conducts the hearing in the same manner as an in-person hearing, using the same question and answer format. You will have the same opportunity to present your case and question the other people involved. The type of hearing will be clearly marked as a **VIRTUAL Hearing** or **Telephone Hearing** on the official **Notice of Hearing**.

Your focused attention is just as important in a virtual or telephonic hearing as in an in-person hearing. Please make appropriate arrangements so that you will not be dividing your attention between the hearing and, for example, caring for children, driving, or performing other tasks.

Virtual Hearings

For virtual hearings, you will join the hearing by clicking on the Zoom link provided in your **Prehearing Notice**. It is important for you to make sure to provide all of the contact information for your witnesses in advance of the hearing so the Zoom link can be sent to them, too. Your witnesses will join and will be put in a virtual breakout room until it is their turn to testify.

Telephone Hearings

If your hearing is a telephone hearing and you have a witness, it is recommended that a second telephone extension be available for you to hear the testimony given by your witness. An open line must be dedicated for the telephone hearing. Please provide the witness' name and telephone number to the Appeals Unit prior to the hearing date. The Hearing Examiner will conference call your witness when it is time for the witness to testify.

The Hearing Examiner will call you at the number listed for you on the **Notice of Hearing**. **If this number is not correct, or if no number is listed, you must call the PFML Bureau, Appeals**

Unit at least one (1) business day before your scheduled hearing with the number where you can be reached.

The Hearing Examiner will call you at or near the time stated on the **Notice of Hearing**. Be near your telephone 15 minutes before your scheduled hearing time in order to avoid delay. However, you should also **be prepared for a delay** in the start of your telephone hearing.

Cell Phone Use

You may use your cell phone for your telephone appeal hearing. **However, in the event that the reception is distorted or dropped, for whatever reason, the Hearing Examiner will attempt one time to call you back.** If the Hearing Examiner is unable to reach you on the call back or the reception is distorted or dropped a second time, the Hearing Examiner will rule on the case in your absence.

After the Hearing

You will receive the Hearing Examiner's written decision, both by email and by mail, **after** the hearing. This decision will either affirm, modify, or set aside the decision you are appealing.

If you do not agree with the Hearing Examiner's decision, you can request judicial review as permitted by 26 MRS Section 850-K (2) and Maine Rules of Civil Procedure Rule 80 C. Your appeal rights will be set out in the decision.

Review Tips

- Prepare yourself for the appeal hearing.
- Think about your case and ask yourself what information, documents, or witnesses will help establish your case.
- Choose witnesses who have direct, personal knowledge of events about your case.
- Stick to the facts.
- Make a list of the important points you would like to present at the hearing.
- Make another list of the points you think the opposing party may make. Consider what you will say or ask in response.
- When submitting documents, remember to retain copies for your records. Documents submitted to the Hearing Examiner become part of the permanent record and cannot be returned. Copies submitted must be clear and legible.

- If you need accommodations, an interpreter, or have other special needs, email Appeals.DOLPFML@maine.gov or call the PFML Bureau, Appeals Unit at (207) 621-5024.
- If you have questions about this booklet, email or call the PFML Bureau, Appeals Unit.

For More Information, Contact Us:

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TTY Users Call Maine Relay 711

Email: Appeals.DOLPFML@maine.gov

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