

## **New York City Department of Consumer and Worker Protection**

### **Notice of Adoption**

Notice of Adoption to amend rules regarding the authority the Department of Consumer and Worker Protection's ("DCWP" or "Department") delegates to the Office of Administrative Trials and Hearings and the timing of DCWP's issuance of written decisions.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on November 22, 2022. A public hearing was held on December 22, 2022 and two comments regarding the rule were received.

### **Statement of Basis and Purpose of Rule**

The Department of Consumer and Worker Protection ("DCWP" or "Department") amends its rules about the authority it delegates to the Office of Administrative Trials and Hearings ("OATH").

Recently enacted local laws regulate relationships in the workplace, confer rights or benefits on workers and establish licensing requirements. These laws are codified in chapter 2 of title 20 of the Administrative Code. Some examples include local law 150 of 2021, which regulates and requires construction labor providers to be licensed, and local law 100 of 2021, which regulates and requires third-party food delivery services to be licensed. The Department is amending its rules to allow violations of these licensing provisions to be filed in the Hearings Division at OATH even though they relate to labor law issues, because the Hearings Division provides for more streamlined and efficient adjudications, and the adjudication of these licensing violations typically does not warrant the lengthier fact-finding process conducted by the Trials Division.

OATH extended the deadline for parties to reopen a default decision after a failure to appear at OATH from 60 days to 75 days. See 48 RCNY 6-21. The Department amends its rules to ensure the Department does not issue a written decision sooner than 75 days from issuance of an OATH recommended decision to ensure a written decision is not issued prior to the deadline for a party to reopen a proceeding at OATH.

Sections 1043, 2203(f), and 2203(h)(1) of the New York City Charter, and Sections 20-104(b), of the New York City Administrative Code authorize the Department to make these rules.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of the Department, unless otherwise specified or unless the context clearly indicates otherwise.

### **Rule Amendments**

Section 1. Paragraph (1) of subdivision (c) of section 6-01 of subchapter A of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

(1) all proceedings commenced to enforce a law within the Department's jurisdiction that regulates relationships in the workplace or that confers rights or benefits on workers, including, but not limited to, the Earned Safe and Sick Time Act set forth in chapter 8 of title 20 of the Administrative Code, provisions related to Fair Work Practices set forth in chapter 12 of title 20 of the Administrative Code, provisions related to mass transit benefits set forth in chapter 9 of title 20 of the Administrative Code, provisions related to displaced grocery workers set forth in section 22-507 of the Administrative Code, provisions related to a prevailing wage for building service employees in city leased or financially assisted facilities set forth in section 6-130 of the Administrative Code, or provisions related to a living wage for employees in city financially assisted workplaces set forth in section 6-134 of the Administrative Code, except where such law licenses persons under chapter 2 of title 20 of the Administrative Code;

§ 2. Subdivision (e) of section 6-02 of subchapter A of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

(e) Not less than [sixty (60)] seventy-five (75) days after the issuance of the recommended decision, the Commissioner or the Commissioner's authorized designee will issue a written decision affirming, reversing or modifying the recommended decision, or remanding the matter back to OATH for further proceedings. Except as provided in subdivision f of this section, or with respect to written decisions that send back any part of a matter to OATH for additional proceedings, the Commissioner's decision adopting, reversing, or modifying the recommended decision shall constitute a final agency determination. The written decision from the Commissioner or the Commissioner's authorized designee will be based on a review of the recommended decision and may consider the trial record from OATH, written arguments submitted to the Department pursuant to subdivision d of this section, any motion papers or other written submissions filed at OATH, and any other OATH decisions bearing on the merits of the case.