

South Dakota Hearing Handbook for Unrepresented Claimants

South Dakota Department of Labor and Regulation
Division of Labor and Management
700 Governors Drive
Pierre, SD 57501
Phone: (605) 773-3681
www.sdjobs.org

IMPORTANT

The South Dakota Department of Labor and Regulation strongly urges you to read this entire booklet before making any decisions concerning a Petition for Hearing on your workers' compensation claim. This booklet will answer many of your questions about this complex process.

If you have further questions after reading this booklet, please contact us at 605.773.3681. Please note that DLR can provide information but not advice.

Introduction

If you and an employer, claim administrator or insurance company (for convenience, they will be referred to as your Employer) cannot agree about what workers' compensation benefits should be paid, either you or your Employer may petition the South Dakota Department of Labor and Regulation (DLR) for a hearing. This handbook is intended to answer your general questions about the hearing process. Terms in *italics* are defined in the glossary (page 11).

Whether to Hire a Lawyer

Many people hire a lawyer to take their workers' compensation case to the DLR. It's a good idea because the issues can be complicated. The state does not provide an attorney for you. Your Employer will be represented by an attorney, and you will be at a disadvantage if you are not. Not every attorney handles employee workers' compensation issues. Ask potential attorneys if they handle employee workers' compensation cases. You cannot be represented by someone who is not an attorney. You do not have to have an attorney to file a petition, but we **strongly** encourage you to have one.

If you hire an attorney, the maximum fee the attorney can collect is limited by state law. The percentage is based on both medical benefits and disability benefits the employer would not have paid unless the attorney got involved. Added to the appropriate fee are the attorney's costs, which includes things like postage, phone use, fees for hiring experts, copying costs, etc. and sales tax.

Of course, if you choose **not** to hire a lawyer or cannot find a lawyer, you may decide to handle your case yourself. If so, we strongly urge you to **read this handbook**. It could save you time and headaches later.

This handbook offers helpful information and is designed to help you learn the process step by step. However, this handbook is only meant as a guide. This handbook does **not** give legal advice. If you have questions regarding this information, please refer to the Department of Labor and Regulation website at www.sdjobs.org or call the Division of Labor and Management at 605.773.3681.

State Bar of South Dakota

Lawyer Referral – Help Line

1-800-952-2333

Internet Home Page:

www.sdbar.org

www.sdbar.net

Access to Justice, Inc. provides free legal assistance to eligible clients and coordinates attorneys who provide pro bono legal services. Clients are responsible for paying case costs.

To obtain information:

- email access.to.justice@sdbar.net

- call 605.791.4147

- visit www.HelpSouthDakota.com

Coverage

The state does not provide workers' compensation coverage (except for state government employees). Other government agencies are usually self-insured. If you work for the federal government, DLR cannot help you; you will need to contact the Office of Workers' Compensation Programs in the U.S. Department of Labor for more information.

Your Employer probably has a workers' compensation insurance policy from a private insurance company. Private employers can be self-insured if certified by DLR. If your Employer is not insured or self-insured, it is uninsured. DLR has the power to hold hearings with insured or self-insured employers, but **not** uninsured employers. DLR can tell you if your Employer is insured or self-insured. If your Employer is uninsured, and refuses to pay benefits, you will have to sue in Circuit Court for benefits you feel you should receive.

Alternative Action: Small Claims Hearing

A Small Claims Hearing process is available, which is less formal and much faster than the standard hearing process. You can petition for a Small Claims Hearing if:

- Your claim is \$8,000 or less;
- Your claim involves medical costs only (no disability claims); and
- You have reached an agreement with your Employer (and approved by DLR) that establishes your general right to workers' compensation benefits, or DLR has issued an order establishing that right.

A form to ask or to petition for a Small Claims Hearing is available as **Appendix Sample 1**.

The Small Claims Hearing rules are found in the Administrative Rules of South Dakota (ARSD 47:03:01:18 to 47:03:01:28). These rules may be found online at legis.state.sd.us/rules/index.aspx. The rules allow a hearing to be held soon after the petition is filed. The *Petitioner* (the person who filed the petition) must prove their case with evidence and testimony. Both the *Petitioner* and *Respondent* must appear at the hearing and present their case.

If you do not meet the requirements of a Small Claims action, you can still file a regular Petition for Hearing.

Alternative Action: Mediation

If your Employer disputes your benefit claims, you may be able to negotiate a settlement. DLR can appoint a mediator who will facilitate settlement discussions (*mediation*) if you and your Employer agree. This is a simple, effective, no-cost alternative to the traditional hearing process. In a hearing, however, the *administrative judge* may reach totally different conclusions about the merits of any claims.

Most mediations are done by telephone, but the mediator can see the parties in person if they deem it necessary. The DLR mediator is someone with experience in workers' compensation law and procedure who will offer opinions about the strengths and weaknesses of the parties' legal positions. The parties are not bound to go along with the mediator's positions. They can accept, reject or modify what the mediator recommends.

You may use **Appendix Sample 2** to request a mediation. You can also mediate with non-DLR mediators; however, you or your Employer will have to pay a non-DLR mediator for their services. You only need the form if you are asking DLR to mediate.

The Hearing Process

The Petition for Hearing

You can file a Petition for Hearing with DLR. Filing a petition means you are suing your Employer. DLR does not charge a fee for filing a petition for hearing. Like a Small Claims hearing, you, as the Petitioner, must prove your case.

You have two years from the date you received the denial letter from the insurance company to file your Petition for Hearing (or Petition for Small Claims Hearing).

You may use **Appendix Sample 3** to file a petition for hearing. You do not have to use DLR's form to petition for a hearing, but our rules do require your petition to include the following information:

- Your name
- Employer's name
- Insurer's name (if there is one)
- Time and place of accident
- Manner in which the accident occurred
- The fact that the employer had actual knowledge of the injury within three business days or that written notice of injury was given to the employer
- Nature and extent of your disability

After DLR receives your Petition for Hearing, we will send you and your Employer an acknowledgment letter. This letter tells the parties you identified as your Employer that we received the petition. It also instructs your Employer to file a response to both DLR and you within 30 days of the date on the letter. You will get a copy of the acknowledgment letter for your information; the form for the letter is included as **Appendix Sample 4**.

Within a few weeks after the Petition for Hearing is filed, a DLR *administrative judge* is assigned to your case. Here are some rules to follow in communicating with the judge:

- Never try to talk to the judge about your case without your Employer being able to participate.
- Never write or email the judge about your case unless you send a copy to your Employer at the same time you send it to the judge.
- If you had contact with the judge about your case **before** the Petition for Hearing was filed, the judge may not be able to hear your case. So be sure to tell DLR and your Employer about the contact. A different judge may have to be assigned.
- If you send documents to the judge, always send copies to your Employer.
- If you reach a partial or complete settlement with your Employer, DLR has to approve the settlement for it to be binding.
- Written communications should be readable without difficulty. Handwritten notes may be difficult to read, so type (or have someone type for you) if possible.

The Answer

After you file your petition, your Employer is required to *answer* the petition, by admitting or denying each statement in the petition. If your Employer does not respond with an answer within 30 days of the date of the acknowledgment letter, let DLR know that no answer has been received. In almost all cases, a telephone call or letter from us will get the required response. If, however, your Employer continues to be unresponsive, you may ask DLR to take further action on your behalf.

When DLR has received the *Answer*, we will send you and your Employer a letter, **Appendix Sample 5**.

DLR will not schedule a hearing or take other action unless you or your Employer asks the DLR to do something. The DLR asks you and the Employer to exchange as much information, in particular *medical records*, as you can without using formal legal requests.

Most of the time, the parties request information from each other as formal *discovery* requests. You do not need to send DLR copies of any of the information received until you want us to take some formal action related to them.

The letter will also identify the administrative judge assigned to your case so you can have the judge removed if you choose. You have only 20 days after the date of the letter to take this action. If you wish to have the judge removed after 20 days, you must show legally sufficient cause.

In some cases, your Employer will file a Petition for Hearing. DLR will then tell you to file an Answer to your Employer's claims within 30 days. There is no form for the Answer, but our rules require you to "state clearly and concisely an admission or denial as to each allegation contained in the petition for hearing." Be sure your Answer is complete. If your Employer makes an assertion in its petition and you do **not** deny the assertion, the assertion may be considered admitted by you.

Discovery and Pre-hearing Procedures

After DLR receives an Answer, most cases require a period of *discovery* and pre-hearing procedure before the case is ready for hearing. DLR will not schedule a hearing until the

parties let us know they are ready, and the DLR judge assigned to the case is comfortable that the case is ready to be heard.

Discovery is what the parties do, before a hearing, to collect information about the case. The goal of discovery is to help the parties go to the hearing with as much knowledge of the facts connected with the claim as possible. Parties are allowed to collect information that may never be revealed in the hearing, but the information requested must be likely to help in finding hearing evidence. The discovery process includes depositions, interrogatories, demands for production of documents, requests for admissions, requests for physical or mental examinations, as well as any motions used to enforce discovery rights.

Depositions

A deposition is testimony taken under oath, but not during the hearing and not in the presence of the judge. A private court reporter will be there to prepare a record of whatever is said. This record is called a transcript. DLR will not pay for production of a written transcript. That responsibility will belong to you and/or your Employer.

The deposition may be by written questions, but is most often face-to-face. If you are deposed, you will be asked questions about the claim or questions that might lead to the discovery of evidence about the claim. You can object to the questions, but will have to have a legally sufficient reason not to answer.

When you are being deposed, you are under oath. You should be careful and accurate when answering questions at a deposition. If you answer a question, you will be assumed to understand it. If you do not understand or do not know the answer, **say so**.

Depositions are taken for several reasons. Sometimes witnesses will not be available for the hearing, and their testimony needs to be preserved. More commonly, people are gathering information and getting the witness's version of events. They want to see for themselves how believable or credible the witness appears to be, because a judge will be deciding that later. Witnesses can be "impeached" by their deposition testimony. For example, if witnesses admit in a deposition that they did not speak to the boss about the injury, then testified at hearing that they did tell the boss, the deposition testimony could be offered at the hearing to prove they were lying.

Subpoenas

When you are notified that you will be deposed, a *subpoena* or a *subpoena duces tecum* often comes with it. A *subpoena* is an order, issued by DLR or an attorney invoking DLR's powers, telling you to be in a certain place at a particular time and day. A *subpoena duces tecum* orders you to turn over certain documents or to bring them to a designated place at a particular time and day. If you cannot appear when scheduled, or cannot produce the subpoenaed documents, you should inform the other party. A subpoena or subpoena duces tecum is usually delivered to you (served upon you) by a law enforcement officer, though they can be served by anyone. In some cases, you may receive an Admission of Service with the subpoena by mail instead of having them personally served on you. This saves the sender money and time, but you do not have to sign and return the Admission of Service to the sender unless you want to.

Interrogatories

These are written questions. When you respond to an interrogatory, you are swearing under oath to the answers. Each question must be answered or objected to. If you do not know the answer, you are required to make reasonable efforts to find it. You should provide all answers no later than 30 days after the interrogatory is received. If that cannot be done, you should tell the party who sent it and ask for more time. If you have the answer later, or your answer changes with time, you must send an updated answer to your Employer. **Appendix Sample 6** is a sample from an interrogatory.

Demand for Production

If records, reports, email messages, or the like are needed, demands for production of documents are often made. Like interrogatories, you must comply with or object to the production demand. A business can assert that a production demand is too burdensome, and in some cases may comply by saying where its records are located so they can be copied, inspected or summarized. **Appendix Sample 7** is a sample from a production demand.

Request for Admission

A request for admission is a request to a party to admit certain facts. One party sends the other a request for admission so basic issues the parties agree upon can be resolved and not have to be proven if the parties go to hearing. The response is to admit, deny or object to the request. If only part of the requested admission is true, admit to only that. **Appendix Sample 8** is a sample of an admission request.

Mental or Physical Examination

You may be asked to attend a mental or physical examination. The rules about an examination depend on whether the examination was ordered by a DLR judge. If you are not ordered to attend, the examination must be “reasonably convenient” for you. DLR has interpreted this to mean the trip must not worsen your condition, or be under conditions which make it impracticable. Your Employer must pay the cost of you going to the examination, including the doctor’s fees, meals, lodging and transportation. If the trip is reasonably convenient and you do **not** go, you will lose any disability benefits you would have received, until you do attend an examination.

If a party asks DLR to order you to attend an examination, the order must set out the time, place, manner, conditions and scope of the examination, and the person or persons by whom it is to be made. You have the right to object to any of these things.

Once DLR orders you to attend, however, you must go.

Medical Records

Medical records, the examination notes or opinions from the medical provider, are a critical part of every workers’ compensation case. However, a judge cannot consider them unless you do one or more of the following things:

- Show the records to your Employer’s attorney, and have the attorney agree (*stipulate*) that the judge can consider the records

- Bring the medical provider to the hearing, and have them testify the records are theirs
- Depose the medical provider and have them testify the records are theirs
- Prepare an affidavit, **Appendix Sample 9**, in which the provider says, under oath and signed in the presence of a notary, that the records are theirs. The affidavit needs to include the provider's credentials. (Sometimes called a curriculum vitae, the credentials will look like a résumé.) Your Employer must be officially notified at least 30 days before the hearing that such an affidavit will be shown to the judge. Timely mailing of a Notice of Affidavit, **Appendix Sample 10**, will do that.

Motion to Compel

If discovery laws are broken, DLR may intervene. For example, a party does not answer an interrogatory question, objects to it without proper grounds, or gives an evasive or incomplete answer. If the problem cannot be worked out between the parties, the affected party may file a Motion to Compel with DLR.

This asks DLR to force a party to comply with discovery, and to reimburse the party for the costs (e.g. attorney's fees) of making the motion. If DLR grants the Motion to Compel and its order is not followed, DLR can take further action to enforce the order.

Scheduling Orders

Scheduling Orders set out a timeline for pre-hearing actions. You or your Employer can make a written request to start the process for such orders. DLR will send out a Proposed Scheduling Order, **Appendix Sample 11**, asking you and your Employer what deadline dates will work for both of you. **Appendix Sample 12** is an example of a Scheduling Order. You should look at it to get an idea of the deadlines such orders set. If the dates set in the order will not work for you, contact the judge issuing the order to ask that they be changed.

An important date in the Scheduling Order is the one for the Prehearing Conference. At that conference, the DLR judge, you and your Employer will be on the telephone to discuss the hearing. You should be prepared to identify any witnesses you plan to have at the hearing, to say what issues or claims you will have to present, and to tell the judge what days and times you have available to hold the hearing. A Prehearing Order, **Appendix Sample 13**, goes out after the conference, with a deadline for making schedule changes. You will also receive a Notice of Hearing, **Appendix Sample 14**, which will remind you where and when the hearing will be held.

The Hearing Itself

The hearing is usually held in the community where the injury occurred. DLR will hold the hearing in as convenient a location as possible. Hearings have been held in courtrooms, libraries, conference rooms, school offices and public meeting halls. The hearings are open to the public, but are rarely attended by those without a direct interest in them. A court reporter hired by DLR will record the testimony. As in a deposition, no written transcript will be prepared unless the parties pay for it. DLR does not pay for this.

The hearing rules are set by state administrative procedures and evidence law. The DLR judge is always a South Dakota-licensed attorney. The hearings are semi-formal, and may

last anywhere from an hour to several days. You and your Employer get to present your sides of the case and to question the witnesses that testify. All testimony is taken under oath.

You and your Employer can testify, call witnesses and present other relevant evidence. After each witness testifies, the other side has the chance to ask questions or cross-examine the witness. After the first side has finished presenting all its evidence, the other side has the same opportunity to present its case through testimony and other evidence. The judge may also ask the witnesses questions.

Both sides must ask that documents be made part of the record. The other side will be given a chance to object to them. The judge decides whether the law allows you to include these documents in the record. At a minimum, documents have to be authentic and relevant. For example, if the document is a letter from someone, you have to be able to prove it really is their letter (by evidence other than just the signature), and that the contents of the letter will help prove the facts in your case. As with medical records, in some cases your Employer may be willing to agree that documents are authentic and/or relevant without more proof. You should talk to your Employer about this before the hearing and see if they will *stipulate*.

After both sides have had the chance to present all the information they wish, you will have the chance to give concluding remarks that summarize the facts and tell the judge what legal action you want the judge to take. Many times *briefs* are written instead of making oral comments; these briefs typically are done within a few weeks after the hearing.

After the judge receives all the legal arguments the parties want to make, the judge will send out a Decision on the case. It is not a final decision at this point. The judge will instruct the parties to prepare Findings of Fact, Conclusions of Law, and an Order which, when signed by the judge, will make the Decision final. **Appendix Sample 15** is an example of Findings of Fact, Conclusions of Law and an Order.

If you do not agree with the judge's Decision and Findings, Conclusions and Order, you have the right to petition the Secretary of Labor to review them. The review must be requested no later than 10 days after the judge's ruling becomes final. The Secretary may deny the petition, direct that an additional hearing be held or order that additional evidence be received.

If you do not agree with the Secretary or wish to bypass review altogether, you have the right to appeal to Circuit Court, then to the state Supreme Court. It is beyond the scope of this handbook to explain the procedure for appealing a case. You are encouraged to talk to an attorney, or review the laws about administrative appeals found in Chapter 1-26 of our state's codified laws.

5 Tips for Representing Yourself at a Hearing

1. Make a good impression. If you dress neatly, it tells the judge that you respect the process and care about your case.
2. Be respectful. Be respectful to everyone at the hearing, including the other side. Don't argue with the judge. Try to stay calm.
3. Make time for the hearing. Put aside sufficient time for this hearing. It may last all day or longer. You need to be there to present your case.
4. Prepare your case. Know in advance what witnesses you wish to question and the evidence you will need to have admitted, in order to prove your case. Bring at least three copies of any evidence you plan to use. Write out the questions you plan to ask and go over them with your witnesses before the hearing.
5. If you need help, hire a lawyer. Most important, you can use a lawyer if you need help. You may start this case on your own, but later realize that you need the help of an attorney.

Assistance from DLR Staff

IMPORTANT

DLR staff **can** give **INFORMATION**, but **cannot** give **ADVICE**.

Here are some examples of what information or answers the staff can give:

- Has a petition (answer, motion, response, certificate of service, objection, etc.) been filed?
- I just got a petition for hearing. It says I have to file an answer. What is an answer? When does my answer have to be filed?
- I just got a subpoena for a deposition. What does that mean?
- How can I get an interpreter for one of my witnesses? Who will pay for the interpreter?
- Can I subpoena a witness for hearing? What is a subpoena duces tecum?
- Can I get my medical records that were filed by the insurance carrier?
- Can I get information from a previous case?
- Where can I find an attorney? (State Bar of South Dakota Lawyer Referral Help Line, 800-952-2333)

Here are some examples of what the staff cannot do:

- Advise you whether to bring a petition to the Department.
- Give advice to one party but not the other party, or take sides in a case.
- Advise you to take a particular course of action in your case.
- Disclose the outcome of a matter before it is public record.
- Give out information that must be kept confidential or is not public record.
- Give an opinion of what will happen if a petition is filed with the Department.
- Recommend a lawyer.
- Talk to the judge for you about your case.
- Let you talk to the judge without the other side being present.

Glossary of Legal Terms

Administrative Judge – a licensed attorney employed by the Department to hold hearings authorized by statute.

Agreement – an oral or written promise to do something.

Answer – the responding party’s written response to the petition.

ARSD – Administrative Rules of South Dakota

Brief – Written arguments or statements by the parties applying the facts of the case to the law

Burden of Proof – This refers to who must prove their case and by how much. In a workers’ compensation hearing, the Petitioner has the burden of proving their case by a preponderance of the evidence (more than half).

Certificate of Service – Form filed with each official document stating that the opposing party has received a copy of the official document. Usually, the address of the opposing party is listed on the certificate.

Default – a failure to act, appear or perform an act or obligation that is legally required.

Default judgment – when a party who has been sued, fails to answer the petition, the DLR may enter a judgment by default against that party.

Discovery – a pretrial proceeding where a party to an action is informed of the facts known by the parties or witnesses.

Evidence – any presented proof, which may be established by witnesses, testimony, records, documents, etc.

Interrogatory – a written question or set of questions submitted by one party to the opposing side on any matter relevant to the case.

Mediation – a method of solving problems without going to hearing; negotiating with the opposing side, with help from a mediator.

Medical records – notes or opinions from a medical provider following a medical exam, likely kept by the hospital or clinic. This does not usually include the medical bills.

Notice of Hearing – an official notice from the judge telling the parties when a hearing is scheduled.

Petitioner – the person or company filing the petition for hearing; similar to a “plaintiff” in a civil case.

Respondent – the person or company against whom the petition is brought; similar to a “defendant” in a civil case.

SDCL – South Dakota Codified Laws

Service of process – a legal method of delivering papers to the opposing party in a lawsuit. This proves to the Department, by filing an affidavit of service or certificate of service, that the other side received a copy of the papers.

Settlement – an oral or written agreement between the parties regarding the matter before the Department. All settlements must be in writing and approved by the Department before it is binding.

Stipulation – an oral or written agreement between the parties regarding certain evidence or findings.

Subpoena – a written legal notice requiring a person to appear at hearing or at a deposition in order to give testimony. A subpoena duces tecum orders a person to turn over certain documents or to bring them to a designated place at a particular time and day.

Testimony – a solemn statement made under oath. Giving false information under oath is perjury.

Appendix

Sample 1	Small Claims Petition for Hearing
Sample 2	Mediation Request Form
Sample 3	Petition for Hearing
Sample 4	DLR Form Letter – Receipt of Petition for Hearing
Sample 5	DLR Form Letter – Acknowledgement of Answer
Sample 6	Interrogatories
Sample 7	Demand for Production of Documents
Sample 8	Request for Admissions
Sample 9	Affidavit
Sample 10	Notice of Affidavit
Sample 11	Proposed Scheduling Order
Sample 12	Scheduling Order and Notice of Telephonic Prehearing Conference
Sample 13	Prehearing Order
Sample 14	Notice of Hearing
Sample 15	Findings of Fact and Conclusions of Law

Sample 1

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

_____,
Claimant,

HF No.

v.

_____,
Employer,

**SMALL CLAIMS PETITION
FOR HEARING**

and

_____,
Insurer.

_____, Claimant, makes claim against
_____, Employer, and
_____, Insurer, and respectfully alleges, to
Claimant's best knowledge, information and belief:

1.

That I, Claimant, suffered an injury, disease or hearing loss which arose out of and in the course of my employment with Employer.

2.

That Employer was self-insured, or insured by Insurer, at the time of my injury, disease or hearing loss. When I use the term "Employer" for the remainder of this petition, it will include the Insurer, if any, by reference.

3.

That the South Dakota Department of Labor and Regulation has previously ordered Employer to be responsible for my injury, disease or hearing loss, or has approved an agreement between Employer and me making Employer responsible.

4.

That Employer has not paid the following medical costs (attach additional pages if necessary):

5.

That the above costs are reasonable, medically necessary, and connected with my injury.

6.

That the above costs do not exceed \$8,000.

7.

WHEREFORE, the Claimant petitions that the Division of Labor and Management hold a hearing and award the medical expenses to which the Claimant is entitled under South Dakota workers' compensation law.

Dated this _____ day of _____, 20 ____.

Claimant's name, address, and phone number (* = required):

Name*

Address (street, apt/box#, city, state)*

Phone #*

Cell #

Other (email, fax)

Sample 2

Sample 3

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

_____,'

Claimant,

PETITION FOR HEARING

vs.

_____,'

Employer,

and

_____,'

Insurer.

COMES NOW, _____, Claimant

in the above matter, respectfully shows and alleges as follows:

I.

That on or about the _____ day of _____, _____, and for some time prior thereto, Claimant was employed by _____ in _____, South Dakota.

II.

That the Employer was insured on the date of injury listed below under the Workers' Compensation laws of the State of South Dakota with the Insurer above named.

III.

That on or about the _____ day of _____, _____, while Claimant was employed by _____ Claimant suffered an injury to

_____, all of which arose out of and in the course of his or her employment with said Employer, In the manner following:

IV.

That thereafter and within less than three (3) days after the injury the Employer had actual knowledge of Claimant's injury.

V.

That the injury described above has caused Claimant to suffer the following disability or disabilities:

WHEREFORE, Claimant requests that a hearing be had on the claim and that upon such hearing an award of worker's compensation benefits be made for any and all benefits to which Claimant is entitled under the South Dakota Workers' Compensation Act.

Dated this _____ day of _____, _____.

Petitioner's name, address, phone number and Social Security Number:

Sample 4

Date

Employer Address

Insurer Address

RE: HF No. 1, 2005/06 – Claimant v. Employer name and Insurer name (example)

Greetings:

This letter acknowledges receipt of a Petition for Hearing filed by Claimant in the above-referenced matter. You are hereby served with a copy of the Petition for Hearing.

According to ARSD 47:03:01:02.01, any adverse party has 30 days after the date of the mailing of this notice to file a response to the Petition for Hearing. The response shall be in writing and need not follow any specific form. The response shall state clearly and concisely an admission or denial as to each allegation contained in the Petition for Hearing. Please send the response to the Department at the address given above, with a copy of the response to Claimant's representative.

In addition, this file has been assigned HF No. 1, 2005/06 (example). **Please use the assigned hearing file number on all pleadings and correspondence sent to the Department.**

A Handbook for Unrepresented Claimants is enclosed for (Claimant's name).

Sincerely,

James E. Marsh
Director

JEM/

cc: Claimant's name

Sample 5

Date

Claimant Address

RE: HF No. 1, 2005/06– Claimant v. Employer name and Insurer name (example)

Dear Claimant:

This letter acknowledges receipt of Employer/Insurer's Answer in the above-referenced matter.

The parties are directed to exchange as much relevant information as possible informally and promptly, without the necessity of discovery requests. See SDCL 62-4-44 and 62-4-45.

The Department may enter a Scheduling Order, pursuant to ARSD 47:03:01:12, at the written request of any party.

If the parties are prepared to have this matter heard before the entry of a Scheduling Order, please contact the Department, in writing.

Filing of discovery matters with this office is no longer necessary. Such filings will be discussed at the prehearing conference. It will be necessary for the parties to notify the Department of affidavits provided and depositions that have been taken.

Finally, please take notice that the Department has assigned the above-referenced workers' compensation hearing file to Administrative Law Judge, _____. This notice is given for purposes of and pursuant to SDCL 62-7-12.2.

Sincerely,

James E. Marsh
Director

JEM/

cc: Employer/Insurer's Counsel

Sample 6

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

Injured Party,

Claimant,

vs.

Widget Maker,

HF No. 1, 2005/06

Employer,

Employer/ Insurer's Interrogatories

and

Insurance Carrier,

Insurer.

TO: John Layman, Pierre, South Dakota, 1

PLEASE TAKE NOTICE that pursuant to SDCL 15-6-33, Employer/Insurer Hereby requests that Claimant fully answer the following interrogatories and requests for production under oath within thirty (30) days after service.

PLEASE TAKE FURTHER NOTICE that if you fail to make or cooperate in providing answers to these interrogatories and production requests, the Employer/Insurer will call upon the Department of Labor to impose sanctions as provided in SDCL 15-6-37.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who has assisted in preparing your answers to these interrogatories.

Dated at Pierre, South Dakota, this 1st day of January, 2006.

John Barrister,
Attorney for the Employer/Insurer

Sample 7

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

**Injured Party,
Claimant,**

HF No. 1, 2005/06

vs.

**Widget Maker,
Employer,**

**Employer/Insurer's Demand for
Production of Documents**

and

**Insurance Carrier,
Insurer.**

TO: John Layman, Pierre, South Dakota

PLEASE TAKE NOTICE that pursuant to SDCL 15-6-34, Employer/Insurer demands production of documents under oath within thirty (30) days after service hereof. PLEASE TAKE FURTHER NOTICE that if you fail to cooperate in responding to these production demands, the Employer/Insurer will call upon the Department of Labor and Regulation to impose sanctions as provided in SDCL 15-6-37. Any document responsive to this request that is not produced for any reason shall be identified by date, subject matter, author, recipient, and the basis upon which the document is withheld.

PRODUCTION DEMAND NO. 1: All medical records in Claimant's possession which are relevant to his claim.

Dated at Pierre, South Dakota, this 1st day of January, 2006.

John Barrister,
Attorney for the Employer/Insurer

Sample 8

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

**Injured Party,
Claimant,**

HF No. 1, 2005/06

vs.

**Widget Maker,
Employer,**

Request for Admission

and

**Insurance Carrier,
Insurer.**

TO: John Layman, Pierre, South Dakota,

You are requested, within thirty (30) days after service of this request, to admit (for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the hearing) the truth of the following facts:

1. Your name is John A. Layman.

Dated at Pierre, South Dakota, this 1st day of January, 2006.

Jane Legal,
Attorney for the Claimant

Sample 9

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

Claimant,

HF No. 1, 2005/06

vs.

Widget Maker,

Employer,

AFFIDAVIT

and

Insurance Carrier,

Insurer.

SS.

I, _____, being first duly sworn, on oath state: that I am currently a practitioner of the healing arts, licensed to practice in the state of South Dakota; that I examined _____; that I have reviewed the reports attached as Exhibit A to this Affidavit; that the reports constitute all of my reports, and that if called upon to testify I would testify to the same facts, observations, conclusions, opinions and other matters in these reports with reasonable medical probability. My curriculum vitae is attached as Exhibit B.

(signature of affiant)

Subscribed and sworn to before me this _____ day of _____, 20 _____.

(Notary Seal)

Notary Public

Sample 10

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

Claimant,

vs.

Widget Maker,

Employer,

HF No. 1, 2005/06

**NOTICE OF SDCL 19-16-8.2
AFFIDAVIT**

and

Insurance Carrier,

Insurer.

TO: _____:

PLEASE TAKE NOTICE that _____, Claimant,
intends to offer the records and Affidavit of _____,
at the hearing in this matter. This notice is given to comply with SDCL § 19-16-8.2.

(date)

(signature of party giving notice)

CERTIFICATE OF SERVICE

I certify that on _____, 20____, at _____, South Dakota, a true and correct copy of this Notice of SDCL § 19-16-8.2 Affidavit was mailed by first-class mail to each of the parties listed below:

Signature

Sample 11

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

HF No. 1, 2005/06

Claimant,

v.

PROPOSED SCHEDULING ORDER

Widget Maker,

Employer,

and

Insurance Carrier,

Insurer.

Pursuant to ARSD 47:03:01:12, it is hereby

ORDERED that the respective parties shall file with this office within ten (10) days, a response to the following:

1. What are the relevant issues?
2. Are there any matters this party considers pertinent for consideration in the scheduling of this case?
3. What facts are undisputed?
4. You may submit proposals for the following deadlines:
 - a. To add additional parties or amend pleadings?
 - b. For Claimant to disclose and identify experts along with any expert reports?
 - c. For Employer/Insurer to disclose and identify experts along with any expert reports?
 - d. To file discovery requests?
 - e. To complete discovery?

- f. To file prehearing motions?
- g. To conduct the prehearing conference?

The Department will enter a Scheduling Order following the submission of the parties' responses. Noncompliance with this Order may result in the entry of a Scheduling Order without benefit of a response. The Scheduling Order may not be modified except by order of the Department upon a showing of good cause.

Dated this _____ day of _____, 20____.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

Administrative Law Judge

Sample 12

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

HF No. 1, 2005/06

Claimant,

v.

**SCHEDULING ORDER AND
NOTICE OF TELEPHONIC
PREHEARING CONFERENCE**

Widget Maker,

Employer,

and

Insurance Carrier,

Insurer.

Pursuant to ARSD 47:03:01:12, it is hereby ORDERED that the following schedule shall be followed:

1. The deadline to add additional parties or amend pleadings by motion is February 21, 2007;
2. The deadline for Claimant to disclose and identify its expert(s), together with the expert's report is April 16, 2007;
3. The deadline for Employer/Insurer to disclose and identify its expert(s), together with the expert's report is May 16, 2007;
4. The deadline for filing discovery requests is May 16, 2007;
5. The deadline for completion of discovery is June 18, 2007; and
6. The deadline for filing prehearing motions is July 18, 2007.

The Scheduling Order may not be modified except by order of the Department upon a showing of good cause.

The telephonic prehearing conference in this proceeding is scheduled for August 17, 2007, commencing at 10:00 a.m., CST.

IT IS ORDERED that the parties shall be fully prepared at the time of this conference to:

- a. Identify all outstanding issues;
- b. Present arguments and authorities in regard to all motions or amendments to pleadings, which must be filed with the Department prior to conference;
- c. Identify all potential witnesses;
- d. Identify all affidavits and depositions intended to be offered at hearing or objections thereto;
- e. Stipulate to all factual matters not in dispute;
- f. Stipulate to the admission or foundation of exhibits where appropriate;
- g. Present any requests for official notice;
- h. Set a date and time for hearing of this matter.
- i. Present any other matters which will aid in the expeditious conduct of the hearing.

IT IS FURTHER ORDERED that each party participating in the prehearing conference have a thorough knowledge and be prepared to discuss the case. Pursuant to ARSD 47:03:01:15, an order shall be entered subsequent to the conference reciting any action taken, rulings made, and agreements reached by the parties. The order will control the subsequent course of the hearing unless modified by further order of the Department.

Dated this _____ day of _____, 20_____.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

Administrative Law Judge

Sample 13

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

HF No. 1, 2005/06

Claimant,

v.

PREHEARING ORDER

Widget Maker,

Employer,

and

Insurance Carrier,

Insurer.

The above-entitled matter came on for telephonic prehearing conference before James E. Marsh, Director, Division of Labor and Management on August 17, 2007, at 10:00 a.m. Jane Legal represented Claimant. John Legal represented Employer/Insurer. Pursuant to ARSD 47:03:01:15 and the stipulations of the parties and/or rulings of the Administrative Law Judge, it is hereby ORDERED:

1. That the issues to be presented at hearing are:

Whether Claimant's work was a major contributing cause for her present condition.

2. That the live witnesses to be called by Claimant are:

Claimant

3. That the live witnesses to be called by Employer/Insurer are:

Walter Widget

4. That the following affidavits are received into evidence:

Dr. Fix

5. That the following depositions are received into evidence:

Dr. Fix

6. That the parties have stipulated to the following facts:

Claimant worked for Employer at the time of the claimed injury.

7. That the parties have stipulated to foundation of the following exhibits:

Medical records

That the parties shall be bound by this Order unless objection is made in writing to the DLR and received by August 30, 2007. No changes will be allowed after that date except in the case of unforeseen exigencies.

Dated this _____ day of _____, 20____.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

James E. Marsh
Administrative Law Judge

Sample 14

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

HF No. 1, 2005/06

Claimant,

v.

ORDER AND NOTICE OF HEARING

Widget Maker,

Employer,

and

Insurance Carrier,

Insurer.

IT IS ORDERED that the above-captioned matter will be brought on for hearing pursuant to SDCL 62-7-12 by the Department of Labor as follows:

DATE:	Date of Hearing
TIME:	Time of Hearing, or as soon thereafter as counsel may be heard
PLACE:	Place of Hearing

The reason for the hearing is to determine Claimant's eligibility for benefits pursuant to the South Dakota Workers' Compensation Law, SDCL Title 62. The Prehearing Order entered on Date of Prehearing Order, includes a more detailed statement of the nature of this hearing and is hereby incorporated by this reference.

The hearing is being held under the legal authority and jurisdiction of SDCL Title 62, the South Dakota Workers' Compensation Law. The hearing is an adversarial proceeding. You have the right to be present and represent yourself at the hearing or be represented by an attorney at your own expense. These and other due process rights will be forfeited if they are not exercised at the hearing. If you do not appear at the scheduled time of the hearing, the matter may be dismissed or it may be decided on the basis of evidence presented by another party at the hearing. Following the hearing, the Administrative Law Judge will issue a decision that may deny workers' compensation benefits to Claimant or grant benefits that may be the responsibility of the above Employer(s)/Insurer(s).

If the amount in controversy in this matter exceeds \$2500 or if a property right may be terminated as a result of this proceeding, any party to this case has a right to request within 10 days after service of this notice that the matter be transferred to the Office of Hearing Examiners. A decision based on a hearing before the Department of Labor and Regulation or the Office of Hearing Examiners may be appealed by a party in interest to Circuit Court and the South Dakota Supreme Court as provided by law.

If any participant in this hearing requires accommodation due to a disability, contact the Department of Labor at least one month in advance of the scheduled hearing and suitable arrangements will be made.

DONE at Pierre, Hughes County, South Dakota, this ____ day of _____, 20____.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

Administrative Law Judge

COPYING OF EXHIBITS

Due to the workload of the Department of Labor and Regulation, we are unable to copy exhibits following hearings. Please make copies of your exhibits for opposing counsel and for your use during the hearing. If an exhibit is offered and there are no copies available, it will be your responsibility to copy the exhibit and make sure the original is provided to the Department of Labor and Regulation.

Sample 15

**SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT**

Injured Party,

Claimant,

HF No. 1, 2005/06

vs.

Widget Maker,

Employer,

**FINDINGS OF FACT and
CONCLUSIONS OF LAW
and ORDER**

and

Insurance Carrier,

Insurer.

This matter came before the Department of Labor and Regulation, Division of Labor and Management, by way of a workers' compensation hearing held September 25, 2007. Claimant, Injured Party, and Widget Maker and Insurance Carrier, Employer/Insurer, were present at the hearing and represented by counsel. The Department issued a Decision dated October 25, 2007. The Department now issues Findings of Fact, Conclusions of Law and an Order which incorporates that Decision by reference.

FINDINGS OF FACT

1. Claimant was injured on March 1, 2006, when he strained his back.
2. Claimant's doctor established that Claimant's work was a major contributing cause for his strained back.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the parties and issues involved in this action.
2. Claimant suffered a work-related injury, for which Employer/Insurer is legally responsible.

ORDER

In the matter of Injured Party, Claimant vs. Widget make, Employer and Comp Carrier, Insurer and the Division of Labor and Management, South Dakota Department of labor, having heard this matter on September 25, 2007, pursuant to notice, and the Division having entered its Decision, Supplemental Decision, Findings of Fact, and Conclusions of Law relative to the matter, it is ORDERED that:

1. Comp Carrier pay all any and all benefits stemming from Injured Party's back strain that occurred on March 1, 2006.

Dated at Pierre, South Dakota, this 15th day of November, 2007.

James E. Marsh
Director



Auxiliary aids and services are available upon request to individuals with disabilities. State and federal laws require the Department of Labor and Regulation to provide services to all qualified persons without regard to race, color, religion, age, sex, ancestry, political affiliation or belief, national origin, disability, or marital or economic status.