

STATE OF ILLINOIS – DEPARTMENT OF LABOR
115 S. LASALLE STREET, 37th FLOOR
CHICAGO, ILLINOIS 60603

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IDOL - CHICAGO OFFICE

IN THE MATTER OF:)
)
SHEET METAL AND AIR)
CONDITIONING CONTRACTORS')
NATIONAL ASSOCIATION OF)
GREATER CHICAGO, WESTSIDE)
MECHANICAL GROUP, INC. AND)
ADMIRAL HEATING &)
VENTILATING, INC.,)
)
OBJECTOR(S),) STATE FILE NO. 2027-H-CC08-2365
)
)
)
)
v.)
)
JANE R. FLANAGAN, DIRECTOR of the)
ILLINOIS DEPARTMENT OF LABOR,)
and THE ILLINOIS DEPARTMENT OF)
LABOR)
)
RESPONDENTS.)

RESPONDENTS' MOTION TO DISMISS OBJECTORS'
OBJECTION AND REQUEST FOR HEARING
AND DENY ITS REQUEST FOR EXTENSION OF TIME

Respondents, Jane R. Flanagan, Director, of the Illinois Department of Labor and The Illinois Department of Labor ("IDOL"), by their attorneys, Stephanie Barton and Sean Imburgia, bring forth this MOTION TO DISMISS the Objection and Request for Hearing and DENY the Motion for Extension of Time filed by Sheet Metal and Air Conditioning Contractors' National Association of Greater Chicago, Westside Mechanical Group, Inc., and Admiral Heating & Ventilating, Inc. (collectively "Objectors") pursuant to the Illinois Prevailing Wage Act ("PWA"), 820 ILCS 130/4 and 9 for lack of subject matter jurisdiction in that the cause of action was not filed within the required 30-day statutory time limit. In support, Respondents state as follows:

1. Section 9 of the PWA states in relevant part:

To effectuate the purpose and policy of this Act the Department of Labor shall, during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages for each county in the State and shall publish the prevailing wage schedule ascertained on its official website no later than July 15 of each year.

820 ILCS 130/9.

2. On July 15, 2026, the Illinois Department of Labor posted and published on its official website¹ the prevailing rate of wages for each county in the State as required by Section 9 of the PWA. 820 ILCS 130/9. See Current Prevailing Rates.

3. Section 9 of the Act provides a statutory right not afforded in common law to any person affected by the prevailing wage schedule to file an objection at any time “within 30 days after the Department of Labor has published on its official web site” the prevailing wage schedule “by filing a written notice with the Department of Labor stating the specific grounds of the objection.” *Id.*

4. Consistent with the Statute, the Department of Labor also published on its website homepage the following Notice:

The Department of Labor must ascertain the prevailing rate of wages for each county in the State of Illinois during the month of June of each calendar year and publish the prevailing wage schedule on its official website no later than July 15th of each year. At any time within 30 days after the Department of Labor has published the prevailing wage schedule, any person affected may file an objection pursuant to Sections 4 or 9 of the Prevailing Wage Act and a hearing is conducted pursuant [sic] the Administrative Hearings Rules, 46 [sic] Ill. Adm Code 120.

See Section 4/9 cases here.

¹ ILLINOIS DEPARTMENT OF LABOR, Current Prevailing Rates, <https://labor.illinois.gov/laws-rules/conmed/current-prevailing-rates.html> (pub. July 15, 2026). Courts may take judicial notice of the published websites as long as the parties are given an opportunity to be heard on the issue. See *Mauvais-Jarvis v. Wong*, 987 N.E.2d 864, 896, n. 9 (Ill. App. Ct. 2013) citing *Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 648 (7th Cir. 2011).

See Illinois Department of Labor website homepage.²

5. 56 Ill. Admin. Code § 120 is the Illinois Department of Labor Rules of Procedure in Administrative Hearings and applies “to all administrative hearings concerning contested cases conducted under the jurisdiction of the Director of Labor and/or the Department of Labor, except for formal hearings conducted under the Wage Payment and Collection Act [820 ILCS 115].” Section 120.100.

6. Regarding filing and service of appeal, Section 120.130(a) - (c) requires:

a) Documents and requests permitted or required to be filed with the Director or the Department in connection with a hearing shall be addressed and mailed or delivered to the Department's Chicago office, 160 N. LaSalle, C-1300, Chicago IL 60601. The Department's Chicago office is open from 8:30 a.m. to 5:00 p.m. Monday through Friday, except for national and State legal holidays. When the Act or this Part requires the filing of a motion, brief, exception or other paper in any proceeding, the document must be received by the Department or the officer or agent designated to receive that matter before the official closing time of the receiving office on the last day of the time limit, if any, for the filing or extension of time that may have been granted. Filings received after 5:00 p.m. will be considered filed on the following business day.

b) In computing any period of time prescribed or allowed by this Part, the day of the act, event or default after which the designated period of time begins to run is not to be included. The period of time shall run until the end of the last day, or the next following business day if the last day is a Saturday, Sunday or legal holiday. . . .

c) Documents may be filed with the Department by certified or First Class mail, by messenger service, private delivery service, or personally at the Department's Chicago office. Filing by electronic transmission, such as telefax machine or electronic mail (e-mail), will not be accepted, except when specifically requested or ordered by the ALJ.

² ILLINOIS DEPARTMENT OF LABOR, <https://labor.illinois.gov>. See also ILLINOIS DEPARTMENT OF LABOR, Section 4 & 9 Hearings, <https://labor.illinois.gov/laws-rules/legal/hearings.html>.

7. Not counting July 15, 2026 (as per Section 120.130(b) of the Administrative Code), the date the prevailing wage rates were published, 30 days thereafter is Friday, August 14, 2026. 56 Ill. Admin. Code § 120.130(b).

8. Pursuant to Section 120.130(a), when the Act requires a filing, such document must be *received by* the Department by 5:00 pm, and pleadings received after 5:00 p.m. will be considered filed on the following business day. 56 ILL. ADMIN. CODE § 120.130(a).

9. Pursuant to Section 120.130(c), filing occurs by certified or First-Class mail, by messenger service, private delivery service or personally at the Illinois Department of Labor's Chicago Office; filing electronically by email or telefax will not be accepted. 56 Ill. Admin. Code § 120.130(c).

10. The Objection and Request for Hearing in this matter was not filed within the 30-day statutorily created time period (on or before August 14th at 5:00 p.m.) to invoke subject matter jurisdiction.

11. Illinois administrative bodies are not authorized to consider matters not timely filed pursuant to statutory time limits and lack subject matter jurisdiction. See *Weatherly v. Human Rights Comm'n*, 338 Ill. App.3d 433, 437, 788 N.E.2d 1175, 1178 (2003) (explaining when a charge has been untimely filed with the Illinois Human Rights Commission, the Commission lacks subject matter jurisdiction to consider it); *Goral v. Dart*, 2020 IL 125085, ¶ 41, 181 N.E.3d 736, 745-46 (2020).

12. The Illinois Supreme Court has expressed the legal significance when a statute creates substantive rights not available through common law, and how fixed filing periods are a condition to seek any such relief:

Statutes of limitation only fix the time within which the remedy for a particular wrong may be sought. [Citation.] They 'are procedural in nature [citations] and are not designed to alter substantive rights ***.' [Citation.]

On the other hand, 'statutes which create a substantive right unknown to the common law and in which time is made an inherent element of the right so created, are not statutes of limitation.' [Citation.] Such a time period 'is more than an ordinary statute of limitations' [citation]; it 'is a condition of the *** liability itself and not of the remedy, alone. *** It goes to the existence of the right itself.' [Citation.] Such a provision is a condition precedent to the plaintiff's right to seek a remedy. [Citations.] Such statutes set forth the requirements for bringing the right to seek a remedy into existence. They do not speak of commencing an action after the right to do so has accrued. They are jurisdictional, not mandatory."

Fredman Brothers Furniture Co. v. Department of Revenue, 109 Ill. 2d 202, 486 N.E.2d 893, 895 (1985).

13. Illinois Courts have recognized administrative tribunals as having limited jurisdiction for which it is solely created and can only assume such jurisdiction in conformity with the statute which empowers it. In *Klopfner v. Court of Claims*, the Court held, "when a special statute of limitations is applicable to a statutory right of action, the plaintiff bears the burden to plead and prove the action was brought within the time prescribed." 286 Ill. App. 3d 499, 506, 676 N.E.2d 679, 684 (1997).

14. Objectors have failed to plead in its Objection facts to support filing was timely and/or meet their burden of proof that subject matter jurisdiction of the Illinois Department of Labor is invoked to grant a right to a hearing.

15. Objectors sent their Objection and Request for Hearing by email August 14, 2026 at 9:11 p.m. *See* Exhibit A.

16. The Administrative rules do not allow filing by email as follows:

c) Documents may be filed with the Department by certified or First Class mail, by messenger service, private delivery service, or personally at the Department's Chicago office. Filing by electronic transmission, such as telefax machine or electronic mail (e-mail), will not be accepted, except when specifically requested or ordered by the ALJ.

56 Ill. Admin. Code § 120.130(c).

17. As Objectors' written notice of Objection and Request for Hearing was not received by certified or First Class Mail, by messenger service, private delivery service or personally at the Department's Chicago office before 5:00 p.m. on August 14, 2026, it was not timely filed pursuant to the statutorily created 30-day Objection time period and this court lacks subject matter jurisdiction pursuant to Section 9 of the PWA. 820 ILCS 130/9.

18. Accordingly, Objectors' Motion for Extension of Time (Exhibit B) does not cure the statutory subject matter filing defect when the Department/Administrative Law Judge has no authority to act or amend such statutorily created jurisdiction and therefore must be Denied. Illinois Courts recognize that a statutorily created subject matter jurisdiction is such a fundamental defect, it cannot be waived or extended, holding:

Subject matter jurisdiction is the power and authority of a tribunal to consider and act upon the case before it. It either exists or it does not. Just as subject matter jurisdiction cannot be conferred by consent or acquiescence of the parties, neither can it be conferred by estoppel.

Klopper, 286 Ill. App.3d at 507 citing *Volkmar v. State Farm Mutual Automobile Insurance Co.*, 104 Ill. App. 3d 149, 432 N.E.2d 1149, 60 Ill. Dec. 250 (1982) and *Paulik v. Village of Caseyville*, 100 Ill. App. 3d 573, 427 N.E.2d 213, 56 Ill. Dec. 133 (1981).

WHEREFORE, Respondents Jane R. Flanagan, Director, of the Illinois Department of Labor and the Illinois Department of Labor hereby request that the matter be DISMISSED based on lack of subject matter jurisdiction as the Objection and Request for Hearing was not timely filed pursuant to Section 9 of the Prevailing Wage Act and the Motion for Extension of time must be DENIED.

Respectfully submitted,

By: /s/ Stephanie Barton
Attorney for Respondents
ARDC # 6279773
Illinois Department of Labor
524 S. 2nd St., Suite 400
Springfield, IL 62701
Phone: (217)782-6206

By: /s/ Sean Imburgia
Attorney for Respondents
ARDC #6336084
Illinois Department of Labor
115 S. Lasalle St., Fl. 37
Chicago, IL 60603
Phone: (708) 318-8768

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused the foregoing MOTION TO DISMISS to be served pursuant to Section 56 Ill. Admin. Code § 120.130 via personal service as designated below along with a courtesy copy via email all on September 3, 2026, prior to 4:00 p.m. as follows:

By Personal Service to:

Illinois Department of Labor
Attn: Hearings Division
115 S. La Salle St., 37th Floor
Chicago, IL 60603

And courtesy email copy to: (DOL.Hearings@illinois.gov) and ALJ Nichole Cain

By email to:

Christina K. Wernick and Megan M. Wilkes
Laner Muchin, Ltd.
515 North State St., Suite 2400
Chicago, IL 60654

Email to: (cwernick@lanerlaw.com)
(mwilkes@lanerlaw.com)

Timothy J. Ryan
Midwest Region Laborers'
#1 N Old State Capitol Plaza, Ste. 525
Springfield, IL 62701

Email to: (tryan@midwestlaborers.org)

Matthew J. Cleveland
IBEW, Local No. 134
2722 S. Dr. Martin Luther King Jr. Drive
Chicago, Illinois 60616

Email to: (mcleveland@local134.org)

George Rapidis
Chicago Laborers' District Council
Labor-Management Cooperation Committee
999 McClintock Dr., Suite 301

Burr Ridge, IL 60527

Email to: [\(GRapidis@LDCLMCC.com\)](mailto:GRapidis@LDCLMCC.com)

James Connolly Jr., Joanna Barrera, Mary Colleen Kilbride
Chicago Laborers' District Council
Labor-Management Cooperation Committee
999 McClintock Dr., Suite 300
Burr Ridge, IL 60527

Email to: [\(JC2@LIUNAFour.com\)](mailto:JC2@LIUNAFour.com)
[\(JBarrera@LIUNACHicago.org\)](mailto:JBarrera@LIUNACHicago.org)
[\(CKilbride@LIUNACHicago.org\)](mailto:CKilbride@LIUNACHicago.org)

Jeremy Esparza
Laborers' International Union of North America, Local 1
8618 W Catalpa Ave., Suite 1101
Chicago, IL 60656

Email to: [\(JEsparza@LaborersLocalOne.com\)](mailto:JEsparza@LaborersLocalOne.com)

Joseph Sweeney, Melissa Binetti, Marc R. Poulos, Kara M. Principe
Indiana, Illinois Iowa Foundation for Fair Contracting
6170 Joliet Road, Suite 200
Countryside, IL 60525

Email to: [\(jsweeney@iiiiffc.org\)](mailto:jsweeney@iiiiffc.org)
[\(mbinetti@iiiiffc.org\)](mailto:mbinetti@iiiiffc.org)
[\(mpoulos@iiiiffc.org\)](mailto:mpoulos@iiiiffc.org)
[\(kprincipe@iiiiffc.org\)](mailto:kprincipe@iiiiffc.org)

/s/ Rebecca Lustig
Rebecca Lustig
IDOL, Legal Technical Advisor I

