

Key Highlights of Administrative Decisions Making and Procedure for Judicial Review

Description

Federal Administrative Procedure Proclamation No. 1183/2020 (FAPP) defines “Administrative Decision” as a decision issued by an administrative agency on relating to persons rights or interest in its day-to-day function, excluding issuance of Directives. Administrative Agency means an Executive Organ of the Federal Democratic Republic of Ethiopia duly established by law and includes the Executive Organs of City Administrations accountable to the Federal Government.

FAPP is applicable in all Administrative Agencies except Prosecutor and Police when they perform duties administered by the Criminal Procedure Law and Military and Security Institutions.

Initiation of Administrative Decision: The initiation for an administrative decision can be made either by an applicant or relevant administrative agency.

Manner of Administrative Decision Application: An application for administrative decision shall be made in writing and may be submitted in person, a registered postal address or electronic means. The agency may prepare forms through which an application may be made. In any case a written application of administrative decision shall include: date, name of the applicant or his agent, signature and address; name of the administrative agency to whom the petition is made; the right and interest of the applicant being sought; act that the administrative authority has to do and facts and evidence relevant for the decision.

Record of Applications: Upon receiving an application for administrative decision, the agency shall immediately furnish a written confirmation of application, that contain details of receiving relevant documents attached there.

Principles to follow when making administrative decision include balancing the individual interest with public interest, avoidance of irrelevant matters and interests, rendering of professionalism, proper hearing, good faith, reasoned decision, avoid conflict of interest, equality of customers, timely decision, predictability, and transparency.

Administrative decision may only be rendered by the Head of the Administrative Agency.

Conducting Hearing: Before rendering any administrative decisions shall provide adequate opportunity of hearing. However, decision may render without hearing if there is no arguments of the facts of the case or if it is special privilege or if the administrative agency has alternative decision power ;or the issue is urgent.

Conditions of Hearing: The parties to case has the right to appear in person and have the right to give testimony, to produce evidences to access and examine evidences presented to the Authority. The Agency may use all legal methods to get documents of investigation and any evidences from the party participated in the argument, witnesses and professional persons.

Recusal: A person may be recused from the decision making if he has a direct or indirect interest on the matter or the matter at hand affects a person that has a relation with a decision maker in consanguinity or Affinity, close friend or if he has represented the person regarding whom the decision is being considered, as an agent, attorney or in any other professional capacity or he has made a decision on the matter in another capacity.

In case where one of the grounds listed above are present the person may be recused from decision making process on his own accord, or the petition of the an interested person. If recusal is requested, until the head of administrative decision rendering final decision the person raised matter of recusal shall remain suspended from entertaining the case. The Head accepted the recusal request initiated by the interested person or others shall render decision within five working days to stay or recused.

Administrative Decision: An Agency shall notify the concerned person of its decision with its reason in writing. The decision shall contain date and number of decision, name of the Authority, parties to the case and their address, issues of claim, discretion of evidences, description of fact and Law and decision.

Suspension: The party whose who may incur damage on his right and interest by immediate enforcement of the decision can apply for the suspension of the decision to the authority rendering decision. An administrative agency receiving a petition for suspension may order the case to be seen again or to suspend any part of the decision.

Right to Lodge Complaint: Any person against whom and administrative decision is made has the right to lodge a complaint to the Agency. All administrative agencies shall establish a complaint handling division and notify such establishment to clients.

Stay of Enforcement: Enforcement of any decision of an administrative agency against which a complaint is lodged will be stayed until the complaint is processed and a final decision made. However, the head of the Agency may order the enforcement of the decision where delay in enforcement may cause an irreversible damage to public interest.

Handling of the complaint: The complaint handling body shall properly examine the complaint it has received and present its recommendation to the Head of the Agency or an officer duly authorized by the Head. The decision of the Head of the Agency or an officer duly authorized by the Head of the Agency, after considering the recommendation of the complaint handling body shall be considered as the final decision of the agency. The agency shall notify the petitioner, in writing, the decision made.

Judicial Review of Administrative Decisions: Any interested person can file a petition requesting a judicial review of an administrative decision. However the judicial review shall be sought against a final decision of the administrative agency. A petition for a judicial review should exhaust all remedies available within the Agency before petitioning the court for judicial review. However, the obligation to exhaust remedy shall not apply if the concerned Agency unduly delay decision.

The Federal High Court(FHC) shall have the jurisdiction for judicial review. The decision of the FHC could be appealed to the Federal Supreme Court. The FHC shall establish special benches to handle petitions of judicial review

Principles of Review: An administrative decision will be revoked by a court where it failed to honor the principles stipulated in FAPP.

Procedure of Judicial Review:A petition to review an administrative decision shall be made within 30 days after the petitioner was notified of the decision .

If the court finds the petition to review to have merit, the court shall give the concerned administrative organ to give its written response within 15 days. The court has the power to order records to be brought to court pertaining to the decision.

Decision of Judicial Review and Execution: The court should render its decision within a short time possible. The court may confirm, partially or fully reverse the decision submitted for review. When the Court partially or fully invalidate the decision, it may order the administrative agency to revise or reconsider its administrative decision by rectifying the shortcomings identified through the court's decision. The decision of the court should be executed immediately.

The legality of the administrative decision that is partially or fully invalidated will be revoked. However, administrative agency's decisions done prior to the date the court made a ruling shall stay valid.

On procedural matters not covered by FAPP, the Civil Procedure Code shall apply. A person who incurred damage as a result of fault committed through the administrative decision is entitled to seek compensation from the administrative authority that is responsible in accordance with the relevant law.

The Council of Ministers has adopted a State of Emergency following the Covid-19 pandemic. As a result, Companies that administer their employees as per Labor Proclamation 1156/2019 are prohibited from terminating the employment contact of their employees during this time of the state of emergency outside of the procedure identified by the Ministry of Labor and Social Affairs. The Ministry of Labor and Social Affairs is expected to come up with the new directive. For the Amharic version of the Regulation click:- <https://mail.google.com/mail/u/0/#inbox?projector=1>

Category

1. Latest Posts

Date Created

September 29, 2020

Author

dmethiol_admin

Dagnachew & Mahlet Law Firm LLP