
29 C.F.R. § 18.804

Hearsay exceptions; declarant unavailable.

(a) *Definition of unavailability. Unavailability as a witness* includes situations in which the declarant:

- (1) Is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the judge to do so; or
- (3) Testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) Is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under paragraph (b) (2), (3), or (4) of this section, the declarant's attendance or testimony) by process or other reasonable means.

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