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Governor

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Chairperson

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State of Wisconsin
Labor and Industry Review Commission

October 12, 2015

THE HONORABLE SCOTT WALKER
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JEFFREY RENK
CHIEF CLERK OF THE SENATE
Via Email: Jeff.Renk@legis.wisconsin.gov

PATRICK E. FULLER
CHIEF CLERK OF THE ASSEMBLY
Via Email c/o: Julie.Martyn@legis.wisconsin.gov

Dear Governor and Chief Clerks:

On behalf of the Labor & Industry Review Commission (LIRC), I am pleased to submit the agency 2013-2015 Biennial Report in accordance with Wis. Stat. § 15.04(1)(d). The report provides an overview of the agency structure and workload, and highlights program improvements made in the biennium. Additional information is available on our agency website at http://lirc.wisconsin.gov.

I am proud to lead the commission as it works each day to provide expertise and a cost-effective process to review disputes in key employment-related programs for employers and employees of the State of Wisconsin.

Sincerely,

Laurie R. McCallum
Chairperson

Enclosure

Cc: Wisconsin Department of Administration
Via Email c/o: Tracy.Williamson@wisconsin.gov

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Labor & Industry Review Commission

Biennial Report

2013-2015

This report is designed to provide an overview of the organizational structure and highlight program improvements of the Wisconsin Labor & Industry Review Commission (LIRC) from 2013-2015. We encourage you to visit our website at http://lirc.wisconsin.gov/ for more detailed information about the commission.

Scott Walker, Governor

Laurie R. McCallum, Chairperson
C. William Jordahl, Commissioner
David B. Falstad, Commissioner

Agency Functions and Organization

The Wisconsin Labor and Industry Review Commission (LIRC) is an independent agency established to provide a fair and impartial review of the employment law decisions of the administrative law judges (ALJs)[1] of the Department of Workforce Development (DWD), primarily in cases involving Unemployment Insurance (UI), Worker's Compensation (WC), and Equal Rights (ER).[2] LIRC's independent review of ALJ decisions serves the vital role of providing consistent expertise in decision-making that stabilizes these employment-related programs for employers and employees in the State of Wisconsin. LIRC provides a cost-effective process to correct errors and maintain consistency and stability in these programs.

LIRC's mission is the independent and impartial resolution of these appeals. In carrying out this mission, LIRC seeks to ensure that:

- All employers and employees are provided a neutral and efficient quasi-judicial forum for the resolution of disputes.
- All parties have been afforded a full and fair opportunity to be heard, and all proceedings have been carried out in a manner respecting the requirements of due process and the dignity of each individual.
- All parties receive the benefits or protections to which they are entitled by law.
- The interpretation and application of the law, as enacted by the Wisconsin Legislature, is correctly and consistently interpreted and applied.
- The public trust and confidence conferred on LIRC by the Wisconsin Legislature is respected.
- As a separate and independent state agency, LIRC's decisions are rendered free from any influence by the Department of Workforce Development, the agency whose decisions it is reviewing.
- Its actions contribute to the continuing stability and consistency of the unemployment insurance, worker's compensation, and equal rights programs.[3]

LIRC conducts a review of the evidence submitted at the hearing before the ALJ, considers any arguments submitted on behalf of the parties, consults with the ALJ when

necessary, and then issues a written decision which may affirm, reverse, or modify the decision of the ALJ, or direct further hearing or other proceedings.[4] The decisions of LIRC may be appealed to circuit court.[5]

Although LIRC was created as a distinct agency in 1977,[6] its history of decision-making in employment cases dates back over one hundred years. In 1911, the State Industrial Commission was created to administer Wisconsin's new Workmen's Compensation Act.[7] The Industrial Commission replaced the Wisconsin Bureau of Labor Statistics, which had been created in 1883 to collect non-agricultural statistics and given authority to enforce laws regulating the employment of women and children that had been passed as early as 1867.[8]

At the time the Industrial Commission was created, Wisconsin's law was the first worker's compensation law in the nation.[9] In 1932, the Industrial Commission was given the added responsibility of administering Wisconsin's newly enacted Unemployment Compensation Act. Wisconsin's Unemployment Compensation Act was also the first of its kind in the nation.[10] From its inception, the Industrial Commission held a prestigious role in the country for many years as a model for other states interpreting these laws.[11]

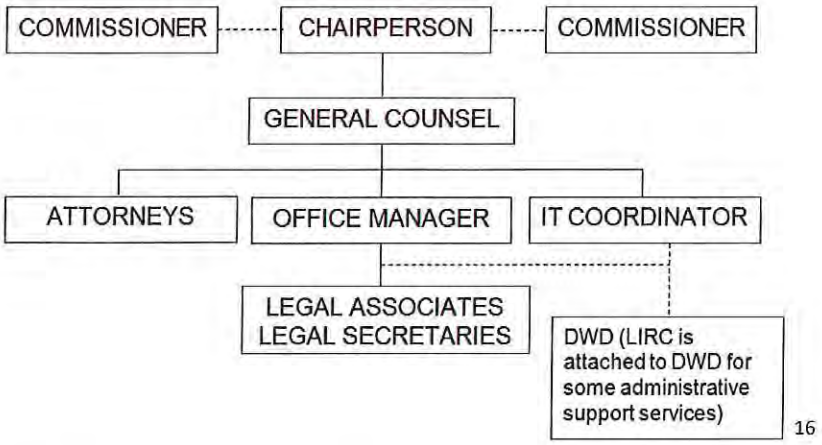
The Industrial Commission was renamed in 1967 and became the Department of Industry, Labor and Human Relations (DILHR). Administration of the Unemployment Compensation Act was handled by the Unemployment Compensation Division of DILHR, while the Worker's Compensation Act was administered by DILHR's Worker's Compensation Division. DILHR was also given responsibility for the Governor's Commission on Civil Rights, which

became the DILHR Equal Rights Division (ERD). DILHR continued to be headed by three commissioners, who decided appeals of decisions made by these three Divisions.

In 1977, DILHR became a cabinet-level agency headed by a Secretary who was appointed by the Governor.[12] DILHR handled the administrative functions of the programs. LIRC was created as a separate agency to handle the quasi-judicial functions that the commissioners previously handled at the Industrial Commission and DILHR. The name of DILHR was changed to the Department of Workforce Development (DWD) in 1996.[13]

The commission is composed of three commissioners who are appointed by the Governor, subject to confirmation by the Senate, and who serve staggered 6-year terms.[14] In odd-numbered years, the commissioners elect a chairperson to serve a 2-year term.[15] During the 2013-2015 biennium, the commissioners were Laurie R. McCallum, Chairperson; C. William Jordahl, Commissioner; and David B. Falstad, Commissioner. All current commissioners are attorneys, and they bring over 100 years of combined legal experience to the decision-making of the commission. Biographical information about current commissioners is available on the commission's website at http://lirc.wisconsin.gov/commissioners.htm.

LIRC has 23.5 full-time equivalent positions to assist the commissioners in their work. These include 1 attorney supervisor, 13 attorneys who review cases and represent the commission in court, 1 office manager, 8 support staff, and 1 information technology specialist. During the biennium, LIRC had two LTEs (one support staff, one attorney) to assist with the increased workload from the Great Recession. The following schematic represents LIRC's functional organizational structure during the 2013-2015 biennium:



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Performance and Operations During the Biennium

On an annual basis, the commission issues approximately 3,000 decisions. The majority of the decisions it issues are UI decisions. In recessionary times, the commission may issue up to 4,000 UI decisions in a year. Because LIRC is the final administrative appeal for UI cases, the increase in appeals during a recession impacts LIRC later than it does DWD. For instance, during the recent Great Recession, the years with LIRC's highest numbers of appeals were in 2010-2013. Only in 2014 did LIRC's UI caseload begin to return to pre-recessionary levels. The commission also issues approximately 200 WC decisions and 100 ER decisions in a year. Statistical information about LIRC's decision-making for the past 20 years is available on the commission website: http://lirc.wisconsin.gov/lirc_stats.htm.

During the 2013-2015 biennium, LIRC accomplished two lean government initiatives to improve its operations. In 2013, LIRC conducted a Value Stream Mapping event (VSM) to streamline its case review process for UI cases. Follow-up actions to implement the UI VSM were conducted throughout 2013 and 2014. In 2015, LIRC conducted a VSM to streamline its

case review process for WC cases. The goals of the VSMs were to identify and eliminate waste in the UI and WC case review processes, including staff time, materials, and nonproductive case processing time; to develop a more efficient process to ensure that LIRC exceeds the timeliness requirements of the U.S. Department of Labor for UI benefit cases; to improve the time needed to issue WC decisions; and to improve and automate elements of the appeal process.

The commission made many significant improvements in the case review processes and follow-up actions continue to be done. The revised case review process eliminated "batching" of cases and created a "continuous flow" model for reviewing cases. The commission modified procedures for electronic transmission of documents, and eliminated unnecessary or redundant tasks. The results of the VSMs were substantial. For UI benefit cases, the average case age in May 2013 when the VSM was conducted was 47 days; after several improvements from the VSM, the average case age in March 2014 was 28 days. For WC cases, the improvements from the VSM in 2015 are expected to result in between 26-34% improvement in the time needed to issue decisions. Some WC case review process improvements were put on hold until the changes to the Worker's Compensation Division are completed. LIRC works continuously to improve its program operations and reduce waste and redundancy.

In addition to the VSMs, LIRC also completed several major projects during the biennium. The commission:

- Updated the commission's emergency action plans;
- Reviewed and updated all agency policies;
- Improved the equal rights compliance enforcement process with the Department of Justice;

- Launched a completely revised website with a searchable database of significant decisions and summaries of court cases and made the website more user-friendly and responsive on mobile devices;
- Provided training to DWD ALJs;
- Met with administrators of DWD Divisions to address appeal process issues of mutual concern; and
- Worked to revise LIRC's procedural rules (on hold until changes to the Worker's Compensation Division are completed).

During the biennium, the commission also interpreted several new UI laws and handled an unprecedented number of court appeals by the DWD. Although the number of UI appeals was lower during the biennium than during the recessionary levels of 2010-2013, the new laws and the increased court appeals took a substantial amount of commission time and resources.

Major Program Goals and Objectives

LIRC is an independent agency established to provide a fair and impartial review of the employment law decisions of the ALJs of the DWD, primarily in cases involving UI, WC, and ER. LIRC's mission is the independent and impartial resolution of these appeals. See "Agency Functions and Organization" above.

The major program goals and objectives have not changed. The Executive Budget submitted to the Legislature was a cost-to-continue budget for the commission. The 2016-17 Budget passed by the Legislature reallocated $434,900 of LIRC's cost-to-continue UI funding to DWD. To absorb this funding cut, LIRC laid off staff and will be unable to fill position vacancies in SFY16.

Flexible Time Work Schedules and Alternative Work Patterns

LIRC first adopted a Flextime Policy for its staff in 1980. This was updated as an "Alternate Work Pattern and Procedures" most recently in 2004. LIRC first adopted a Telework Policy in 2011.

In 2014, LIRC conducted a comprehensive review of all of its policies, eliminated outdated policies, and updated all policies. On September 25, 2014, the commission adopted a new Hours and Flextime Policy and amended its Telework Policy.

The commission's Hours and Flextime Policy allows employees, with supervisor approval, to work a nonstandard or flextime hours schedule in order to maximize personal and production efficiency, remove artificial barriers to employment, improve employee morale, enhance job satisfaction and the spirit of cooperation between management and employees, and provide for a more economical and efficient use of energy, highways, and other transit systems. Supervisors may designate core hours when all employees in work status must be present. Employees must notify supervisors when flexing their work schedule and mark their status on a centralized in/out board.

The Telework Policy allows employees, with approval of the employee's supervisor and the chairperson, to work at home on a regular or as-needed basis. Employees must sign a telework agreement to be able to work at home. During the biennium, LIRC had three legal associates who permanently work at home typing summaries of hearings; communication with these legal associates is primarily electronic, with occasional meetings or trainings at the LIRC offices. Most other employees, including attorneys and support staff, have telework

agreements. Many attorneys work at home one day per week, but must be available for case discussions with commissioners in the LIRC offices when needed. Teleworking allows for uninterrupted work time and work continuation during inclement weather, and ensures that employees have the tools and are familiar with remote working in the event of an emergency situation. Supervisors monitor employees through reviews and performance standards to ensure accountability for flextime hours and teleworking.

Caseload Summary

Statistical information about LIRC's decision-making for the past 20 years is available on the commission website: http://lirc.wisconsin.gov/lirc_stats.htm. The tables and information below show case statistics for calendar years 2013 and 2014, and for January 1 through June 30, 2015 (where available). Note that percentages are rounded and may not equal 100%.

UNEMPLOYMENT COMPENSATION CASES

UNEMPLOYMENT	UI Benefit Appeals	UI Benefits Decisions	UI Pending Benefit Cases at Year End	UI Benefit Court Decisions	UI Tax Appeals	UI Tax Decisions	UI Tax Court Decisions
2013	2,740	2,933	426	140	45	33	1
2014	2,424	2,498	320	120	56	58	6
To 6/30/2015	950	949	NA	72	38	26	3

LIRC UI BENEFIT CASE RULINGS

2013 DECISIONS	
Affirmed	57%
Modified & Affirmed	17%
Affirmed in part/Reversed in part	1%
Reversed	10%
Remanded	7%
Dismissed	8%
Withdrawn	1%

2014 DECISIONS	
Affirmed	50%
Modified & Affirmed	18%
Affirmed in part/Reversed in part	3%
Reversed	8%
Remanded	13%
Dismissed	6%
Withdrawn	1%

1/1/15-6/30/15 DECISIONS:	
Affirmed	49%
Modified & Affirmed	19%
Affirmed in part/Reversed in part	2%
Reversed	7%
Remanded	12%
Dismissed	10%
Withdrawn	1%

UI Employer Tax or Liability Case Rulings

2013 DECISIONS	
Affirmed	12%
Modified & Affirmed	39%
Reversed	18%
Aff'd in part/Rev'd in part	9%
Remand	12%
Dismissed	6%
Withdrawn	3%

2014 DECISIONS	
Affirmed	12%
Modified & Affirmed	52%
Reversed	7%
Aff'd in part/Rev'd in part	3%
Remand	19%
Dismissed	5%
Withdrawn	2%

WORKER'S COMPENSATION CASES

WORKER'S COMPENSATION	WC Appeals	WC Decisions	WC Pending Cases at Year End	WC Court Decisions
2013	176	177	57	34
2014	191	181	120*	29
To 6/30/2015	113	94	NA	16

*Adjustments were made to reflect actual number of cases (appeals) by case number pending at LIRC rather than number of "file" pending at LIRC to be consistent with other programs.

WORKER'S COMPENSATION DECISIONS ISSUED BY TYPE OF APPELLANT

2013 DECISIONS

Total Applicant Appeals	(45% of all appeals)
Affirmed (includes modifications)	74%
Reversed	6%
Remand for Approval of Compromise	8%
Dismissed/late petition	1%
Remand for New Findings & Order	1%
Dismissed/no jurisdiction	6%
Petition withdrawn	4%
Total Respondent Appeals	(52% of all appeals)
Affirmed (includes modifications)	57%
Affirmed in part/Reversed in part	5%
Reversed	11%
Remand for Approval of Compromise	21%
Petition Withdrawn	1%
Remand for New Findings & Order	5%
Applicant & Respondent Combined Appeals	(3% of all appeals)
Affirmed (includes modifications)	20%
Affirmed in part/Reversed in part	40%
Remand for Approval of Compromise	40%

2014 DECISIONS

Total Applicant Appeals	(41% of all appeals)
Affirmed (includes modifications)	70%
Affirmed in part/Reversed in part	4%
Reversed	1%
Remand for Approval of Compromise	11%
Dismissed/late petition	1%
Remand for New Findings & Order	9%
Dismissed/no jurisdiction	1%
Petition withdrawn	1%
Total Respondent Appeals	(55% of all appeals)
Affirmed (includes modifications)	38%
Affirmed in part/Reversed in part	8%
Reversed	20%
Remand for Approval of Compromise	20%
Petition Withdrawn	3%
Remand for New Findings & Order	6%
Other	5%
Applicant & Respondent Combined Appeals	(3% of all appeals)
Affirmed (includes modifications)	23%
Affirmed in part/Reversed in part	50%
Remand for Approval of Compromise	17%
Appeal by Wis. Supplemental Benefit Fund	(1% of all appeals)
Remand for further proceedings	100%

EQUAL RIGHTS CASES

EQUAL RIGHTS	ER Appeals	ER Decisions	ER Pending Cases at Year End	ER Court Decisions	Public Accommodation Decisions
2013	63	111	58	29	1
2014	77	107	39*	19	3
To 6/30/2015	14	59	NA	15	6

*Adjustments were made to reflect actual number of cases (appeals) by case number pending at LIRC rather than number of "file" pending at LIRC to be consistent with other programs.

EQUAL RIGHTS DECISIONS ISSUED

2013 DECISIONS

Affirmed	33%
Modified & Affirmed	44%
Reversed	5%
Remanded	5%
Dismissed (late petition; no juris.)	5%
Settled/Withdrawn	7%

Results:
63% of all decisions issued found no discrimination
14% of all decisions issued found discrimination
23% of all decisions were settlements, withdrawals, dismissals, or procedural decisions where no determination of discrimination was made by the commission.

2014 DECISIONS

Affirmed	35%
Modified & Affirmed	43%
Reversed	6%
Remanded	3%
Affirm in part/reverse in part	4%
Reverse in part/remand	4%
Modify in part/remand	1%
Dismissed (late petition; no juris.)	3%
Settled/Withdrawn	3%

Results:
59% of all decisions issued found no discrimination
10% of all decisions issued found discrimination
34% of all decisions were settlements, withdrawals, dismissals, or procedural decisions where no determination of discrimination was made by the commission.

Performance Measures

The U.S. Department of Labor (DOL) requires[17] that the average age of pending commission UI cases as of March 31st of each year must be 40 days or less. If the average age of LIRC's pending UI cases is more than 40 days on March 31st of any year, the DOL may find the agency out of compliance with federal regulations and the agency has to file a corrective action plan with DOL. DOL will provide federal oversight until the agency is brought back into compliance. In addition, federal funding for the UI program is based on a Resource Justification Model that takes into account timeliness of appeals in calculating the amount of UI funding a

state receives. When the average case age does not meet the federal standards, a state may expect to get less in UI grant funds from DOL.

LIRC has met federal timeliness requirements as of March 31st each year since 2004. LIRC's average UI benefit case age as of March 31, 2013, was 36 days, with a yearly average of 43 days. On March 31, 2014, the average case age was 28 days, with a yearly average of 37 days. On March 31, 2015, the average case age was 29 days, and the yearly average from January 1 to June 30, 2015, was 33 days.

There are no federal performance standards for worker's compensation or equal rights cases. LIRC aims to issue these decisions in an average of 6 months, however, the time to issue these decisions is affected by delays in obtaining transcripts and briefing extension requests from parties.

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[1] Note that some statutes refer to the lower level decision-makers as "hearing examiners." The commission reviews decisions of both ALJs and hearing examiners. For simplicity and readability, this report will refer to all of the lower level decision-makers as ALJs.

[2] Wis. Stat. § 103.04(1).

[3] Updated mission statement approved by commissioners on March 24, 2015.

[4] *See, generally,* Wis. Admin. Code chs. LIRC 1-5.

[5] Wis. Stat. §§ 102.23(1), 103.06(6)(d), 108.09(7), 108.10(4), 111.395.

[6] LIRC was created in Chapter 29, Laws of 1977, or 1977 Wis. Act 29.

[7] Historical information taken generally from LIRC's website, lirc@wisconsin.gov, and DWD's website: http://dwd.wisconsin.gov/dwd/dwdhistory/Year_Pages/wis_indstrl_comm.htm.

[8] *See, Wisconsin Department of Workforce Development Timeline History: Bureau of Labor Statistics,* http://dwd.wisconsin.gov/dwd/dwdhistory/Year_Pages/wis_bls.htm.

[9] *See, Wisconsin Department of Workforce Development Timeline History: Wisconsin Industrial Commission*, http://dwd.wisconsin.gov/dwd/dwdhistory/Year_Pages/wis_indstrl_comm.htm. For additional information about the history of the WC law in Wisconsin, see Wisconsin's Worker's Compensation Centennial 1911-2011, The Nation's 1st Constitutional Worker's Compensation Law, A Legacy of Cooperation and Innovation, published by DWD 2011.

[10] *See, Wisconsin Department of Workforce Development Timeline History: Wisconsin Industrial Commission*, http://dwd.wisconsin.gov/dwd/dwdhistory/Year_Pages/wis_indstrl_comm.htm.

[11] *See generally,* Blaustein, Saul J., Unemployment Insurance in the United States, The First Half Century, W.E. Upjohn Institute for Employment Research, Kalamazoo, MI 1993. The Social Security Act, of which the federal UI program is a part, was adopted in 1935, three years after Wisconsin's Unemployment Compensation Act was adopted. *See also,* Raushenbush, Paul A. and Brandeis, Elizabeth, Our "U.C." Story, 1930-1967, Madison, Wisconsin, 1968 (an edited oral history).

[12] Chapter 29, Laws of 1977, or 1977 Wis. Act 29.

[13] 1995 Wis. Acts 27 and 289. DILHR was renamed the "Department of Industry, Labor and Job Development," but was allowed to use the name "department of workforce development" for any official purpose in Act 289:

> **SECTION 275. Nonstatutory provisions; industry, labor and job development.**
> (1t) ALTERNATIVE NAME FOR THE DEPARTMENT. Notwithstanding section 15.22 of the statutes, during the period beginning on July 1, 1996, and ending on the day after publication of the 1997–99 biennial budget act, the department of industry, labor and job development may use the name "department of workforce development" for any official purpose.

[14] Wis. Stat. §§ 15.06 and 15.105(15) (formerly Wis. Stat. § 15.225, as amended by 2015 Wis. Act 55).

[15] Wis. Stat. § 15.06(2).

[16] Taken from LIRC's website: http://lirc.wisconsin.gov/org_chart.htm. Note that LIRC was recently switched from attachment to DWD for some administrative support purposes to DOA in the 2016-2017 Biennial Budget, 2015 Wis. Act 55.

[17] Unemployment Insurance Program Letter (UIPL) 14-05 and UIPL 14-05 Change 1 describe changes to the UI Performs performance management system used by DOL. The DOL specifies the "Acceptable Level of Performance" or ALP for lower authority appeals like the ALJs and the higher authority appeals boards like LIRC. For higher authority appeals boards, the Core Measure for what constitutes an ALP is the "Average Age of Pending Appeals." This is the measure of all pending single-claimant appeals at the end of the measurement period. The average age of unresolved cases is calculated by first determining the number of days each unresolved case has been pending; the number of days pending for all cases is totaled and divided by the number of unresolved cases to produce the average case age. The ALP for lower authority appeals is an average of 30 days; for higher authority appeals it is 40 days. DOL determines if the ALPs have been met when the average age of pending appeals is measured as of March 31, the last day of the performance year. If a state fails to meet the ALP on the measurement date, it must submit a corrective action plan.