Labor & Industry Review Commission

Wis. Admin. Code LIRC chs. 1 to 5

Notice for Public Comment on Economic Impact Analysis

Under ch. 227.137 Stats., the Labor and Industry Review Commission (LIRC) must prepare a fiscal estimate and economic impact analysis (EIA) for the proposed administrative rules listed above. LIRC is interested in obtaining information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed administrative rules. The comments will be considered when LIRC prepares a final EIA under the state rulemaking procedures.

The following documents are available for review:
Statement of scope
Hearing Draft Rule

You may comment electronically on the EIA to maria.gonzalezknavel@wisconsin.gov on this rule or you can mail your comments to: Labor & Industry Review Commission, P.O. Box 8126, Madison , WI 53708.

The Commission must consider the following items in an EIA. When submitting comments, please provide specific information in these areas and include any supporting economic data, studies or reports. The following information must be discussed in an EIA:

1. Any implementation or compliance costs that are reasonably expected to be incurred.
2. Actual quantifiable benefits of the proposed rule.
3. Whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.
4. Economic impacts of specific alternatives to the proposed rule.

If you are a small business as defined in s. 227.114(1), Wis. Stats., (25 or fewer full time employees or gross annual sales under $5,000,000) please identify yourself as a small business in your comments. We are interested in any comments from small businesses which relate to the potential costs of compliance with the rule, such as the filing of required reports.

You may view the status of current rulemaking and view documents associated with rulemaking at the Wisconsin Administrative Rules website. Wisconsin state agencies value your involvement in agency decision-making and have created this website to make it easy for you to monitor and participate in rulemaking.

Following the public comment period for the economic impact statement, a revised statement will be prepared. LIRC will then submit the rule package and economic impact analysis to the Legislative Clearinghouse hearings on the proposed rule will then be held after proper public notice.

STATEMENT OF SCOPE

Labor and Industry Review Commission

Rule No.: LIRC 1-4 (revise) and LIRC 5 (create)

Relating to: Procedural Rules for Filing Petitions for Commission Review and Commission Review of Cases

Rule Type: Permanent

This statement of scope was approved by the Governor on October 15, 2013, and published in the Wisconsin Administrative Register No. 695 on November 14, 2013 (effective date November 15, 2013).

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The commission analyzed its case review processes using the Value Stream Mapping (VSM) technique and identified ways to make its processes more efficient and lean. As a part of that process, the commission identified changes to its review process that require changes to the commission's rules. The commission's objective in revising its existing procedural rules is to increase the efficiencies in its processes and to reduce the time it takes to resolve cases petitioned by parties for commission review. The commission also examined its administrative rules governing procedures for continued applicability and necessity.

In LIRC 1, regarding general procedural rules, the proposed rule will clarify that commission review is a *de novo* review of the record made at the hearing before an administrative law judge and will describe the record used for commission review. The proposed rule will clarify how the commission may take administrative notice of records maintained by the Department of Workforce Development (department), how the commission may contact the department (such as to verify monetary amounts reflected in decisions and overpayments or to verify the adjudicative process leading to the department's determination), and how the commission may protect and seal confidential information in the record (such as social security numbers). The proposed rule will clarify and expand when the commission may use a transcript of a hearing in lieu of a synopsis of a hearing. (The commission typically uses synopses of hearing testimony in its review but may use transcripts under certain circumstances.) The proposed rule will clarify how the commission may establish briefing schedules for parties in cases pending review. Finally, the proposed rule will clarify the process by which parties may request reconsideration or the setting aside of a commission decision.

In LIRC 2, regarding procedural rules for filing petitions for commission review of unemployment insurance appeal tribunal decisions, the proposed rule will revise the manner in which petitions for commission review may be filed. Currently, petitions may be filed in several ways with several department offices as well as with the commission. The proposed rule will clarify that the petitions for commission review of unemployment insurance appeal tribunal decisions may be filed only on-line through the commission's website. This will facilitate the desired automation of the commission's processes, reduce errors, and improve efficiencies and timeliness.

In LIRC 3 and 4, regarding procedural rules for filing petitions for commission review in worker's compensation and equal rights cases, the proposed rule will update the locations at which petitions for commission review may be filed. The commission will investigate the possibility of requiring petitions for commission review in these cases to be filed on-line with the commission.

LIRC 5 will be created to explain the process for requesting review of an appeal tribunal decision regarding worker classification compliance by the commission pursuant to Wis. Stat. §103.06(6)(c). This statutory provision was created by 2009 Wisconsin Act 292. The commission must adopt rules to facilitate and explain the process for handling petitions for review under this new law.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule does not alter or establish any policies. The proposed rule only implements the commission's limited rulemaking authority to establish procedural rules under Wis. Stat. §103.04(2).

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wisconsin Statutes §103.04(2) authorizes the commission to promulgate rules of procedure. The commission is not authorized to promulgate any other rules.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

State employees will spend approximately 160 hours developing the rule. No other resources are necessary to develop the rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will affect all parties with cases being reviewed by the commission uniformly. Parties include individuals with worker's compensation, unemployment insurance, fair employment, public accommodation, or worker classification compliance claims; employers; worker's compensation insurance carriers; and the department.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no existing or proposed federal regulations that address the procedures to be regulated by the proposed rule.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The commission's rules apply uniformly to all parties with cases being reviewed by the commission and do not establish regulatory standards, or compliance or reporting requirements for businesses. The proposed rules will have no economic impact locally or statewide.

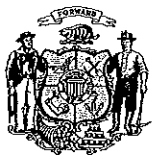
Contact Person: Tracey L. Schwalbe, LIRC General Counsel, (608) 266-7728

Laurie R. McCallum, Commission Chairperson
Department Head or Authorized Signature

12/3/13
Date Approved

Scott Walker
Governor

Laurie R. McCallum
Chairperson



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State of Wisconsin
Labor and Industry Review Commission

PROPOSED RULEMAKING ORDER

The Labor and Industry Review Commission proposes an order to renumber and amend LIRC 1.027; to amend LIRC 1.01, 1.02 (intro.), 1.03, 1.05, 1.07, LIRC ch. 2 (title), 2.015 (intro.) and (1) to (7), 3.04 and 3.05; to repeal and recreate LIRC 1.015, 1.025, 1.04, 2.01, 2.05, 3.01 and 4.01; to create 1.02 (10), 1.08, 2.05 (Note), 3.05 (Note), 4.04 (Note), and LIRC ch. 5, relating to procedures before the commission.

ANALYSIS

Statutes interpreted.

Sections 40.65, 66.191, 102.18 (3) and (4), 102.23, 103.06 (6), 106.52 (4), 108.09 (6) and (7), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7), and 303.21, Stats.

Statutory authority.

Section 103.04 (2), Stats., authorizes the commission to promulgate rules of procedure. The commission is not authorized to promulgate any other rules.

Explanation of agency authority.

The Labor and Industry Review Commission serves as an independent higher authority for appeals of employment law decisions of administrative law judges involving unemployment insurance, worker's compensation, fair employment, public accommodation, and worker classification compliance cases. The commission promulgates procedural rules pursuant to s. 103.04 (2), Stats.

Related statutes or rules.

N/A

Plain language analysis.

The commission has statutory authority to promulgate rules regarding its procedures. The proposed rules will make the rules consistent with recent law changes in 2015 Wis. Acts 180 and 334, and will also clarify several commission procedures and help to improve the speed and efficiency in processing cases and issuing decisions.

In LIRC 1, regarding general procedural rules in all cases before the commission, the proposed rules will provide useful definitions that will simplify drafting and interpretation of the rules. The structure of the rule for filing petitions for review with the commission is reorganized to separate out the different filing requirements for different program areas, and to clarify when and how petitions are filed in each program area. The rule will clarify that commission review is a *de novo* review of the record made at the hearing before an administrative law judge and will describe the record used for commission review. The proposed rule will clarify how the commission may take administrative notice of records maintained by the Department of Workforce Development (department), how the commission may contact the department (such as to verify monetary amounts reflected in decisions and overpayments or to verify the adjudicative process leading to the department's determination), and how the commission may protect and seal confidential information in the record (such as social security numbers). The proposed rule will clarify when the commission may use a transcript of a hearing in lieu of a synopsis of a hearing. (The commission typically uses synopses of hearing testimony in its review but may use transcripts under certain circumstances.) The proposed rule will clarify how the commission may establish briefing schedules for parties in cases pending review. Finally, the proposed rule will clarify the process by which parties may request reconsideration or the setting aside of a commission decision. Various language changes are proposed for clarification and consistency in the rules.

In LIRC 2, regarding procedural rules for filing petitions for commission review of unemployment insurance appeal tribunal decisions, the proposed rule will update the manner in which petitions for commission review may be filed. A recent law change required that all petitions for commission review in unemployment insurance cases be filed with the commission and not with the department of workforce development. The proposed rule will clarify that the petitions for commission review of these decisions may be filed with the commission by mail, by facsimile transmission, or on-line through the commission's website. This will further facilitate the desired automation of the commission's processes, reduce errors, and improve efficiencies and timeliness. A note is created to explain that the commission has answers to frequently asked questions about appealing a commission unemployment insurance decision to circuit court and sample pleadings on the commission's website. The proposed rule makes changes to the provision regarding judicial review of commission decisions to take into account recent law changes. Various language changes are proposed for clarification and consistency in the rules.

In LIRC 3 and 4, regarding procedural rules for filing petitions for commission review in worker's compensation and equal rights cases, the proposed rule will update the locations at which petitions for commission review may be filed. The rule allowing parties to answer petitions for review is moved to LIRC 3 because answers are filed only in worker's compensation cases. Notes are created to explain that the commission has answers to frequently asked questions about appealing commission worker's compensation and fair employment decisions to circuit court with sample pleadings. Various language changes are proposed for clarification and consistency in the rules.

LIRC 5 will be created to explain the process for requesting review of an appeal tribunal decision regarding worker classification compliance by the commission pursuant to Wis. Stat. §103.06(6)(c). This statutory provision was created by 2009 Wisconsin Act 292. No cases have yet been petitioned to the commission under this law. The commission must adopt rules to facilitate and explain the process for handling petitions for review under this new law. The proposed rules establish a process for appealing to the commission that is organized similarly to the appeal process for other program areas, but with specificity for worker classification compliance issues.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

There are no existing or proposed federal regulations that address the procedures to be regulated by these procedural rules of the commission.

Comparison with rules in adjacent states.

Illinois. The State of Illinois has a Board of Review of 5 members appointed by the Governor (2 employee representatives; 2 employer representatives; 1 unaffiliated) to hear appeals of unemployment insurance cases and various federal programs related to unemployment insurance administered by the Department of Employment Security, except claims involving labor disputes. Parties appeal a decision of an appeal hearing referee to the Board of Review within 30 days of the date of mailing the referee's decision. Appeals are filed in person, by mail, online or by facsimile transmission. Parties may request a transcript of the hearing, to submit written argument, and present oral argument within certain deadlines. The Board of Review's decision is based on the existing record obtained before the referee, with further hearings and oral argument seldom required, although parties may request to provide additional evidence if they meet certain conditions. The Board of Review must issue its decisions within 120 days of the date of appeal; if a decision is not issued within 120 days, an appellant may request a Notice of Right to Sue. If the Board of Review does not issue its decision within 14 days of the Notice of Right to Sue, the appellant may bring an action in circuit court. The Board of Review may issue decisions or remand a case to the referee; it does not have authority to reconsider its decisions.

Worker's compensation cases are handled in Illinois by the independent Illinois Worker's Compensation Commission (WCC). The first level decision is made by an

arbitrator of the WCC. If a party disagrees with the decision of the arbitrator, they can appeal to the commission, a panel of three commissioners from the ten-member WCC. The panel reviews the decision of the arbitrator and reviews briefs and oral argument. Appeals of the commission's decision are to the circuit court.

Fair employment laws in Illinois are handled by the Illinois Department of Human Rights (IDHR). A hearing is set before an ALJ of the Illinois Human Rights Commission within 30 to 90 days after a complaint has been filed with the IDHR. The ALJ issues a Recommended Order and Decision. If either party objects, the case will be reviewed by a three-member panel of commissioners. The commissioners are appointed by the governor and approved by the senate, and no more than seven commissioners may be appointed from the same political party. The commission consists of 13 commissioners. The panel may adopt, reverse or modify the proposed decision, or remand the case back to the ALJ. A party may appeal an unfavorable decision of the IHRC to the appellate court.

Iowa. The State of Iowa has a three-member Employment Appeal Board (EAB) that is appointed by the Governor and serves as the final administrative review for unemployment benefit appeals, peace officer issues, contractor registration requirements, rulings of the Occupational Safety and Health Administration (OSHA), and rulings of the Iowa Public Employees Retirement System. Slightly different procedures apply to appeals of different kinds of cases. Parties appeal a decision to the EAB within 15 days of the date of mailing an unemployment decision, or within 30 days for a personnel decision. In general, appeals are filed in person, by mail, or by facsimile transmission. The EAB may join additional parties and consolidate proceedings as necessary to resolve issues. The EAB's review is based on the record before the administrative law judge. A copy of the testimony and evidence at the hearing is mailed to each party. Parties may request to present new or additional evidence before the EAB; the EAB may remand to take additional evidence or hold a hearing to allow parties to present evidence and take testimony. Parties may present briefs and the EAB may allow oral arguments in its discretion. The EAB must render a decision within a reasonable time. Any party may file an application for rehearing with the EAB within 20 days of the date of the EAB's decision; an application shall be deemed denied unless the EAB acts within 20 days of the date of filing the application with the EAB. When the EAB issues its final decision, all administrative remedies have been exhausted and parties may petition to the district court for review.

Worker's compensation cases are decided at the first level by a deputy worker's compensation commissioner who issues an arbitration decision. If any party is dissatisfied with the decision, they can request rehearing or appeal to the Worker's Compensation Commissioner. No new evidence is allowed and the parties brief the issues on appeal. If any party is dissatisfied with the decision of the Worker's Compensation Commissioner, they can appeal to the district court.

Employment discrimination cases are handled in Iowa by the Iowa Civil Rights Commission. The commission consists of seven members appointed by the governor

to serve four-year staggered terms and subject to confirmation by the senate. No more than four members of the commission may belong to the same political party. If an administrative law judge finds probable cause to believe the improper action occurred, a conciliator tries to negotiate a settlement on behalf of the commission and the complainant. If negotiation fails, a decision is made whether to proceed to a public hearing. If the commission determines the respondent violated the Iowa Civil Rights Act, the commission will order "make whole" relief. Appeals of the commission's decision are to a district court.

Michigan. The State of Michigan has a three-member panel of commissioners, with representatives from three different sectors (employee, employer, general public). The panel member that is a representative of the general public serves as the chairperson. Michigan law provides that a party that loses a case before an administrative law judge has a right to appeal the decision to the Michigan Compensation Appellate Commission (MCAC). The MCAC handles appeals of worker's compensation and unemployment insurance cases. An appeal to MCAC must be in writing and signed or verified and must be received within 30 days of the date of the administrative law judge's decision. Parties before an ALJ may agree to bypass the ALJ and transfer the proceeding to the MCAC. If both parties agree, they can stipulate to bypass the MCAC and proceed directly to circuit court. The MCAC review is of the hearing and exhibits in the record before the ALJ. Transcripts of hearings are available only on request and are subject to printing and processing fees. A party may request an opportunity to present oral argument to the MCAC, but that is granted in only rare cases. A party may request to provide written argument or briefs, but the request will only be granted if a request for oral argument was not approved and 2 or more members of the MCAC and all parties agree that written argument should be considered. The MCAC issues written decisions or orders, but may omit giving any reasons for its decision if it affirms an ALJ decision without alteration or modification. A party may request a rehearing of a final decision of the MCAC within 30 days of the date of the decision. A final decision of the MCAC may be appealed to circuit court within 30 days from the date of mailing of the MCAC decision. A decision of the MCAC may be reopened within one year for good cause.

Fair employment and employment discrimination complaints in Michigan are filed with the Michigan Department of Civil Rights. Appeals of hearing referee decisions are handled by the Michigan Civil Rights Commission. The Commission is an 8-member body. Commissioners are appointed by the governor to four-year terms and the appointment must be approved by the senate. No more than four members may be from the same political party.

Minnesota. The State of Minnesota does not have a higher authority administrative review of administrative law judge unemployment insurance decisions. A party may request reconsideration of an administrative law judge's decision within 20 calendar days after the date of mailing the decision. If a party disagrees with the lower level review reconsideration decision, they must appeal to the Minnesota Court of Appeals within 30 days after the decision was sent by electronic transmission or within

33 days after the decision was mailed, and serve the other parties. An employer that appeals must pay a $550 fee.

The State of Minnesota has an independent agency to review worker's compensation decisions of compensation judges called the Minnesota Worker's Compensation Court of Appeals. The agency consists of five review judges appointed to six-year terms by the governor and confirmed by the senate. A panel of three or five judges decides each appeal. The judges review the evidentiary record created at the initial hearing, preside over oral argument if necessary, and decide the legal and factual issues in the case, and issue written decisions and orders. Decisions are appealable directly to the Minnesota Supreme Court.

Fair employment cases in Minnesota are handled by the Minnesota Department of Human Rights. If complaints are not resolved there, they are referred to the attorney general for prosecution.

Summary of factual data and analytical methodologies.

The commission established a team to conduct a Value Stream Mapping (VSM) event to identify potential problems and provide suggestions to improve the commission's workflow. The team included the commission chairperson, the general counsel, the office manager, and several attorneys and support staff. The VSM identified areas for improvement in the efficient processing of petitions to the commission and the commission case review process. Process improvements and technological changes were subsequently made that improved the speed and efficiency of processing cases before the commission. The VSM also identified several procedural rule changes that would improve processing cases and establish consistencies in processing cases in the various program areas with which the commission works. A workgroup was established to review all commission procedural rules and make recommendations for changes. The workgroup consisted of one commissioner, the general counsel, the office manager, and several attorneys with special expertise in each program area. The rules workgroup created draft proposed rules, which the commission approved.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

The commission's procedural rules apply uniformly to all parties with cases before the commission, and do not establish regulatory standards, or compliance or reporting requirements for businesses. The rules do not have any direct economic effect on small businesses, and no discernible indirect economic effects on small businesses.

Effect on small business.

The procedural rule changes are not anticipated to have an economic effect on small businesses.

Fiscal estimate and economic impact analysis.

The proposed rules are procedural and modify and clarify where and how petitions for commission review may be filed and how the commission conducts its review. There are no anticipated fiscal impacts on state funds, or the liability and revenues of any county, city, village, town, school district, technical college district, or sewer district. The commission's rules apply uniformly to all parties with cases being reviewed by the commission and do not establish regulatory standards, or compliance or reporting requirements for businesses. The proposed rules will have no economic impact locally or statewide. See attached form DOA-2049.

Agency contact person. Comments may be submitted to:

Maria Gonzalez Knavel, General Counsel, Labor and Industry Review Commission, 3319 West Beltline Highway, P.O. Box 8126, Madison, WI 53708, (608) 266-3188, maria.gonzalezknavel@wisconsin.gov.

TEXT OF RULE

SECTION 1. LIRC 1.01 is amended to read:

LIRC 1.01 General. The labor and industry review commission has jurisdiction ~~for~~ to review ~~of cases arising~~ under ss. 40.65 (2), 66.191, 1981 Stats., ss. 102.18 (3) and (4), 103.06 (6), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

SECTION 2. LIRC 1.015 is repealed and recreated to read:

LIRC 1.015 Definitions. As used in chs. LIRC 1 to 5:

(1) "Commission" means the Wisconsin labor and industry review commission.

(2) "Commissioner" means a member of the commission.

(3) "Department" means the Wisconsin department of workforce development unless otherwise indicated.

(4) "Equal rights case" means a case in which the commission has jurisdiction under s. 106.52 (4), 106.56 (4), or 111.39 (5) (a), Stats.

(5) "Equal rights division" means the division of equal rights of the department created by s. 15.223, Stats.

(6) "Hearings and appeals division" means the Wisconsin department of administration division of hearings and appeals created by s. 15.103(1), Stats.

(7) "Petition" means a written appeal to the commission to review a decision of an appeal tribunal of the department for unemployment insurance and worker classification compliance cases, a decision of an administrative law judge of the department or hearings and appeals division for worker's compensation cases,

or a decision of an administrative law judge or hearing examiner of the department for equal rights cases.

(8) "Unemployment insurance case" means a case in which the commission has jurisdiction under s. 108.09 (6), or 108.10 (2) or (3), Stats.

(9) "Unemployment insurance division" means the division of unemployment insurance of the department.

(10) "Worker classification compliance case" means a case in which the commission has jurisdiction under s. 103.06 (6), Stats.

(11) "Worker's compensation case" means a case in which the commission has jurisdiction under ss. 40.65, 66.191, 1981 Stats., ss. 102.18 (3) or (4), 303.07 (7), or 303.21, Stats.

(12) "Worker's compensation division" means the division of worker's compensation of the department.

SECTION 3. LIRC 1.02 (intro.) is amended to read:

LIRC 1.02 Petitions for review; appeal period. ~~All petitions~~ A petition for ~~commission~~ review shall be filed within 21 days from the date of the mailing or electronic delivery of the findings and decision or order, except that the petition may be filed on the next business day if the 21st day falls on any of the following:

SECTION 4. LIRC 1.02 (10) is created to read:

LIRC 1.02

(10) Any other day the state office where the petition for review may be filed is officially closed.

SECTION 5. LIRC 1.025 is repealed and recreated to read:

LIRC 1.025 Petitions for review; where and how filed.

(1) A petition for review shall be filed as follows:

(a) In unemployment insurance and worker classification compliance cases, with the commission as provided in sub. (2).

(b) In worker's compensation cases, with the commission as provided in sub. (2), or in person with the department or hearings and appeals division as provided in s. LIRC 3.01.

(c) In equal rights cases, with the department as provided in s. LIRC 4.01. A petition for review in equal rights cases may not be filed with the commission.

(2) A petition for review filed with the commission under sub. (1) shall be filed with the commission by one of the following methods:

(a) On the commission's website on the designated appeal form.

(b) By facsimile (fax) transmission to 608-267-4409.

(c) By mail to the commission's office located at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.

(d) In person at the commission's office at 3319 West Beltline Highway, 2nd Floor, Madison, Wisconsin 53713.

(3) A petition for review may not be filed by email.

(4) A petition for review transmitted electronically through the website of the commission is not considered filed unless and until a message confirming that the petition has been successfully filed is displayed on the petitioner's internet

browser. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is considered filed on the date of filing stated on the commission's electronic record of the filing.

(5) (a) A petition for review transmitted by facsimile (fax) is not considered filed unless and until the petition is physically received and printed at the facsimile machine of the commission to which the petition is being transmitted as provided in sub. (2) (b), or of the equal rights division to which the petition is being transmitted as provided in LIRC 4.01. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission.

(b) 1. Except as provided in subd. 2., a petition for review transmitted by facsimile is considered filed on the date of transmission recorded and printed by the facsimile machine on the petition.

2. In the case of a petition for review in equal rights cases, a facsimile transmission received after the regular business hours of the equal rights division shall be considered filed on the next business day. If the commission's or equal rights division's records indicate receipt of the facsimile at a date later than that shown, then the later date shall control.

(6) A petition for review filed by mail is considered filed only when it is physically received by the commission, except in any of the following cases:

(a) A petition for review in an unemployment insurance case that is filed by mail is considered filed when physically received or postmarked as provided in s. LIRC 2.015.

(b) A petition for review that is filed by mail with the equal rights division as provided in s. LIRC 4.01 is considered filed when the petition is physically received by the equal rights division.

(c) A petition for review that is mailed to the post office box of the commission or the equal rights division, and for which the sender provides proof of delivery to the post office box by mail tracking service, shall be considered filed on the same day as its physical receipt in the post office box if the mail tracking service documentation establishes that the petition was delivered to the post office box on or before 7:45 a.m., and shall be considered filed on the next business day if the mail tracking service documentation establishes that the petition was delivered after 7:45 a.m.

(7) A petition for review filed by personal delivery is considered filed when the petition is physically received by a state office authorized to accept personal delivery during regular business hours.

SECTION 6. LIRC 1.027 is renumbered LIRC 3.035 and amended to read:

LIRC 3.035 Answers. A party opposing a petition for ~~commission~~ review of an administrative law judge's decision under s. 102.18, Stats., may file an answer with the commission within 21 days from the party's receipt of a copy of the petition. A party filing an answer with the commission shall furnish a copy to the opposing party.

SECTION 7. LIRC 1.03 is amended to read:

LIRC 1.03 Withdrawals. ~~Requests~~ A request to withdraw ~~petitions~~ a petition for review shall be in writing. The commission may deny a request by any party to withdraw a petition if the commission has already reviewed and decided the case, but not yet issued its decision, or if the commission considers that withdrawal is not in the best interests of the proper administration of the program involved. Denials of withdrawals shall be in writing, ~~but~~ and may be included in the findings and decision of the commission.

SECTION 8. LIRC 1.04 is repealed and recreated to read:

LIRC 1.04 Record used for review.

(1) Review by the commission is *de novo* and is based on the procedural record of the case, and the evidence submitted at hearing before the department or the hearings and appeals division. The record of the hearing testimony may be in the form of a written synopsis or transcript, and may include an audio recording of the testimony taken at the hearing. The synopsis or transcript shall be prepared by the commission, the department, the hearings and appeals division, or by an outside contractor from an audio recording of the hearing or from notes taken at the hearing by the administrative law judge or hearing examiner. A party may obtain a copy of the synopsis or transcript used by the commission as provided in s. LIRC 1.045.

(2) The commission may base its review on a transcript of the hearing testimony provided by a party if a party timely requests in writing that the commission conduct its review on the basis of a transcript it will provide, the party certifies in

the request that it has ordered preparation of a transcript at the party's own expense, the party files a paper and electronic copy of the transcript with the commission and serves a copy of the transcript on all other parties, and the commission agrees upon review that the transcript is an accurate record of the hearing testimony.

(3) (a) Subject to par. (b), the commission may, without prior notice to the parties, take administrative notice of any of the following:

1. Any generally recognized fact or established technical or scientific fact having reasonable probative value.

2. Department records or information obtained from the department when necessary to confirm the effect of the commission's decision on the amount of benefits due, overpaid, waived, or forfeited, or penalties imposed.

(b) In any case in which the commission took administrative notice under par. (a), a party may submit a written request within 14 days of the commission's decision for an opportunity to provide written argument for any of the following reasons:

1. To challenge the propriety of taking administrative notice of department records or other information under par. (a).

2. To challenge the accuracy of a finding of fact that was the subject of administrative notice.

3. To provide rebuttal evidence regarding a finding of fact that was the subject of administrative notice.

(4) The commission may redact social security numbers and other personally identifiable information and declare all or parts of a document or other material or evidence to be confidential and closed to inspection by one or more parties, representatives, or others.

SECTION 9. LIRC 1.05 is amended to read:

LIRC 1.05 Hearings. If the commission determines that a record in a case is inadequate for the commission to arrive at a decision, the commission shall set aside the decision of the administrative law judge or hearing examiner and remand the case to the department ~~of workforce development~~ or hearings and appeals division to take additional evidence and issue a new decision, or remand the case to take additional evidence on behalf of the commission.

SECTION 10. LIRC 1.07 is amended to read:

LIRC 1.07 Briefs. ~~Either~~ A party may request that the commission ~~to~~ establish a briefing schedule. ~~Requests~~ A request to file ~~briefs~~ a brief may be made in the petition for review~~, in an answer,~~ or in writing after the petition ~~and answer~~ has been filed. The commission may deny a request to file a brief ~~which~~ that is not made in a petition ~~or answer~~ if the commission has already reviewed the case ~~but not yet issued its decision~~ at the time the request is made but not yet issued its decision. ~~Each~~ A party may file ~~with the commission briefs~~ a brief or ~~memoranda~~memorandum within the time limits of ~~the~~ a briefing schedule~~ established by the commission~~. ~~Requests~~ A request for ~~extensions~~ an extension of time for filing ~~briefs~~ a brief shall be made in writing. ~~Extensions~~ An extension may be approved in writing upon good cause shown. A party

filing a brief or memorandum with the commission shall furnish a copy to the opposing party.

SECTION 11. LIRC 1.08 is created to read:

LIRC 1.08 Reconsideration and requests to set aside decisions.

(1) A request for the commission to reconsider a decision, or to set aside any final determination or decision of an appeal tribunal, administrative law judge, or the commission, due to mistake or newly discovered evidence, shall be made in writing by one of the following methods:

(a) By facsimile (fax) transmission to 608-267-4409.

(b) By mail to the commission's office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.

(c) In person at the commission's office at 3319 West Beltline Highway, 2nd Floor, Madison, Wisconsin 53713.

(2) A request for reconsideration of a final commission decision does not toll the time to appeal a commission decision to the circuit court.

SECTION 12. LIRC ch. 2 (title) is amended to read:

CHAPTER LIRC 2

UNEMPLOYMENT ~~COMPENSATION~~ INSURANCE

SECTION 13. LIRC 2.01 is repealed and recreated to read:

LIRC 2.01 Petitions for review; where and how filed. A petition for review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be filed with the commission as provided in s. LIRC 1.025 (2). An out-of-state claimant also may file a

petition for review with a qualified employee of the agent state in which the out-of-state claimant files his or her interstate claim.

SECTION 14. LIRC 2.015 (intro.) and (1) to (7) are amended to read:

LIRC 2.015 Timeliness of petitions. ~~For purposes of s. 108.09 (6) (a), Stats., the words~~ Petitions for review are considered ~~"~~received~~" and~~ or ~~"~~postmarked~~" have the following meanings~~ as follows:

(1) If the petition for review is personally delivered, the petition is considered ~~"~~received~~"~~ when the ~~division of unemployment insurance of the department or the~~ commission physically receives the petition.

(2) If the petition for review is mailed and bears only a United States postal service postmark, the petition is considered ~~"~~postmarked~~"~~ on the date of that postmark.

(3) If the petition for review is mailed and bears both a United States postal service postmark and a private meter mark, the petition is considered ~~"~~postmarked~~"~~ on the date of the United States postal service postmark.

(4) If the petition for review is mailed and bears only a private meter mark, the petition is considered ~~"~~postmarked~~"~~ on the date of that mark, unless it appears that the private meter mark is not accurate.

(5) If the petition for review is mailed and bears no mark, or bears an illegible or inaccurate mark, the petition is considered ~~"~~postmarked~~"~~ 2 business days prior to the date the petition was physically received by the ~~division of unemployment insurance of the department or the~~ commission if the point of origin of the petition is within the State of Wisconsin, and 3 business days if the point of origin is outside the state.

(6) If the petition for review is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, the petition is considered "postmarked" on the date of that delivery service mark.

(7) If the petition for review is sent using a delivery service other than the United States postal service, and does not bear a delivery service mark which is the equivalent of a United States postal service postmark, or bears an illegible or inaccurate delivery service mark, the petition is considered "postmarked" 2 business days prior to the date the petition was physically received by the ~~division of unemployment insurance of the department or the~~ commission.

SECTION 15. LIRC 2.05 is repealed and recreated to read:

LIRC 2.05 Actions for judicial review. Judicial review of any commission decision under s. 108.09 or 108.10, Stats., shall be commenced in the manner and upon the grounds specified in s. 108.09 (7), Stats., and not under ch. 227 or s. 801.02, Stats. A party or the department may commence a legal action for review of the commission decision in circuit court within 30 days from the date of the commission's decision. The action is commenced only by filing a summons and a complaint with the circuit court and serving an authenticated copy of the summons and a copy of the complaint upon the commission, all within 30 days. Service shall be made upon a commissioner or an agent authorized by the commission to accept service only at the commission's office in Madison. Service shall be considered completed service on all parties, but there shall be left with the person so served as many copies of the authenticated summons and copies of the complaint as there are defendants. Service by mail is effective only if the

pleadings are physically received by the commission at its office in Madison within the appeal period. The complaint shall state the grounds upon which review is sought. For plaintiffs other than the department, the summons and complaint shall name as defendants the commission, the department, and every other party to the proceedings before the commission. When the plaintiff is the department, the summons and complaint shall name as defendants the commission, and every other party to the proceedings before the commission. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree, or if the court, after notice and a hearing, so orders.

SECTION 16. LIRC 2.05 (Note) is created to read:

Note: The commission has answers to frequently asked questions about appealing a commission unemployment insurance decision to the circuit court and sample pleadings available on its website at http://lirc.wisconsin.gov/uihowtoappeal.htm.

SECTION 17. LIRC 3.01 is repealed and recreated to read:

LIRC 3.01 Petitions for review; where and how filed. A petition for review of the findings or order of an administrative law judge under s. 102.18, Stats., shall be filed with any of the following, but only in the manner provided:

(1) The commission by any method as provided in s. LIRC 1.025 (2).

(2) In person at a department worker's compensation office or an office of the hearings and appeals division.

SECTION 18. LIRC 3.04 is amended to read:

LIRC 3.04 Compromise settlements. Compromise settlements of worker's compensation claims are governed by s. 102.16, Stats., and s. DWD 80.03. Under s. 102.18 (4) (d), Stats., if a compromise is reached while a case is pending ~~commission~~ review, the compromise shall be submitted to the commission, and the commission shall remand the case to the worker's compensation division ~~of the department~~ or the hearings and appeals division, as appropriate, for consideration of the compromise. If the compromise is not approved, the party who filed the petition for ~~commission~~ review may reinstate its petition by notifying the commission. Under s. 102.24 (2), Stats., if a compromise is reached while a case is pending court review of a commission order, remand shall be to the commission and the commission shall then remand the case to the department or the hearings and appeals division, as appropriate, for consideration of the compromise.

SECTION 19. LIRC 3.05 is amended to read:

LIRC 3.05 Actions for judicial review. Judicial review of any commission decision shall be commenced in the manner and upon the grounds specified in s. 102.23, Stats., and not under ch. 227, Stats., or s. 801.02, Stats. ~~Either~~ A party may commence a legal action for review of the commission decision in circuit court. The action ~~must~~ shall be commenced within 30 days from the date of the decision. ~~Such~~ The action is commenced only by filing a summons and a complaint with the circuit court and serving an authenticated copy of the summons and a copy of the complaint upon the commission, all within 30 days. Service ~~must~~ shall be made upon a commissioner ~~of the labor and industry review commission~~ or an agent authorized by the commission to accept service only at the commission's office in Madison. ~~Such service~~ Service shall

be ~~deemed~~ considered complete service on all parties but there shall be left with the person so served as many copies of the authenticated summons and copies of the complaint as there are defendants. Service made by mail is effective only if the pleadings are ~~actually~~ physically received by the commission at its office in Madison within the appeal period. The complaint shall state the grounds upon which review is sought. ~~The action shall be commenced against the commission, and the party in whose favor the order or award was made shall also be made a defendant.~~ The summons and complaint shall name the party commencing the action as the plaintiff, and shall name as defendants the commission and all other parties identified by the commission in its decision as parties that must be made defendants. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where ~~the~~ a defendant resides. If the plaintiff is a nonresident of Wisconsin, the proceedings shall be in the circuit court for the county where the claim arose. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

SECTION 20. LIRC 3.05 (Note) is created to read:

Note: The commission has answers to frequently asked questions about appealing a commission worker's compensation decision to the circuit court and sample pleadings for claimants available on its website at http://lirc.wisconsin.gov/wchowtoappeal.htm.

SECTION 21. LIRC 4.01 is repealed and recreated to read:

LIRC 4.01 Petitions for review; where and how filed. A petition for review of the findings or order of a department administrative law judge or hearing examiner under s.

106.52 or 111.39 (5), Stats., shall be filed with an office of the equal rights division only as provided in s. DWD 218.21 or 221.22.

SECTION 22. LIRC 4.04 (Note) is created to read:

Note: The commission has answers to frequently asked questions about appealing a commission fair employment decision to the circuit court and a sample petition for judicial review form available on its website at http://lirc.wisconsin.gov/erhowtoappeal.htm.

SECTION 23. LIRC ch. 5 is created to read:

CHAPTER LIRC 5

WORKER CLASSIFICATION COMPLIANCE

LIRC 5.01 Petitions for review; where and how filed. Section 103.06 (6) (c), Stats., governs the procedure by which an employer or the department may petition the commission for review of an appeal tribunal decision issued under s. 103.06 (6) (b) 1. A petition for review of an appeal tribunal decision under s. 103.06 (6) (c), Stats., may be filed with the commission by any manner as provided in s. LIRC 1.025 (2).

LIRC 5.02 Timeliness of Petitions.

(1) A petition for review under s. 103.06 (6) (c), Stats., is timely if it is physically received by the commission, or postmarked, within 21 days after the appeal tribunal decision was mailed to the employer's last-known address, as provided in s. LIRC 2.015.

(2) The commission shall dismiss a petition that is not timely filed unless the petitioner shows that the petition was late for a reason beyond the petitioner's control.

LIRC 5.03 Actions for judicial review.

(1) Section 103.06 (6) (d), Stats., governs the procedure by which an employer or the department may begin an action for judicial review of a commission decision issued under s. 103.06 (6) (c), Stats.

(2) Judicial review of a commission decision under s. 103.06 (6) (d), Stats., may be commenced upon the grounds specified in s. 108.09 (7), Stats., and not under ch. 227, Stats., or s. 801.02, Stats. An employer or the department may commence an action for judicial review of a decision of the commission within 30 days after the date of the commission's decision. The action under this subsection is commenced only by filing a summons and a complaint with the circuit court and serving an authenticated copy of the summons and a copy of the complaint on the commission, all within 30 days. Service shall be made upon a commissioner or an agent authorized by the commission to accept service and shall be made only at the commission's office in Madison. Service shall be considered complete service on all parties but there shall be left with the person so served as many copies of the authenticated summons and copies of the complaint as there are defendants. Service by mail is effective only if the pleadings are physically received by the commission at its office in Madison within the appeal period. The complaint shall state the grounds upon which review is sought. The summons and complaint shall name as defendants the commission, the department, and every other party to the proceedings before the commission. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is the department, the proceedings

shall be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree, or if the court, after notice and a hearing, so orders.

(3) The scope of judicial review and the manner of that review, insofar as it is applicable, shall be the same as that provided in s. 108.09 (7), Stats.

SECTION 24. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.