

Frequently Asked Questions (“FAQs”) about Appealing an Unemployment Insurance Decision of the Labor and Industry Review Commission to a Wisconsin Circuit Court

DISCLAIMER: The following “Frequently Asked Questions” are intended solely as a guideline for those appealing unemployment insurance decisions of the Labor and Industry Review Commission to the circuit court. It is not meant to be legal advice, nor is it legal advice in any fashion. The information does not in any way remove from the individual the responsibility to research and comply with all applicable statutory requirements for the filing and processing of an appeal of a commission decision with the circuit court. For legal advice, you may want to contact an attorney.

1. Do I need an attorney to appeal a commission decision to court?

If you are an individual employee or benefit claimant, you may represent yourself in court. If you choose to have someone represent you, the representative must be an attorney.

If you are an employer, whether or not you need an attorney depends on how your business is organized. If you are doing business as a sole proprietor, you do not need an attorney to appeal to court. However, if your business is organized as a corporation, a limited liability company (LLC), a partnership, a firm, an association, or a cooperative, you must be represented by an attorney in any appeal to court. It is the business's responsibility to determine whether it can or cannot be represented by a non-attorney in legal proceedings before courts.

2. How do I appeal the commission decision?

You must file a summons and a complaint with the circuit court of Wisconsin within 30 calendar days from the date the commission decision was mailed to you (not counting the date the decision was mailed to you).

- When you file the summons and the complaint with the court, take additional sets of the pleadings with you and ask the court clerk to stamp those sets so they show the date they were filed and the case number. Once stamped, these are called “authenticated pleadings.”
- You must then “serve” at least three sets of authenticated pleadings on the commission either in person or by mail. These authenticated pleadings must be received by the commission at its offices in Madison within 30 calendar days of the date the commission decision was mailed to you.
- You must serve as many sets of authenticated pleadings on the commission as there are defendants. What you serve on the commission cannot be a copy of documents the clerk stamped. The documents you serve on the commission must themselves have been stamped by the clerk.
- The commission must receive the authenticated pleadings within the 30-day time period so you must allow sufficient time for the mail to reach the commission if you mail the documents. It is not sufficient for the appeal to be postmarked by the deadline.
- Section 108.09(7) of the Wisconsin statutes governs appeals of commission unemployment insurance decisions and is the exclusive method for appealing commission unemployment insurance decisions to circuit court.

Sample forms for a summons and a complaint that you may find helpful in preparing your documents, can be obtained here: <http://lirc.wisconsin.gov/appeal/newsummonsandcomplaintforms.htm>. You are responsible for filing the correct documents.

DISCLAIMER: The sample summons and complaint forms made available by the Labor and Industry Review Commission are intended solely as a guideline for those appealing decisions of the commission to the circuit court. It is not meant to be legal advice, nor is it legal advice in any fashion. The forms do not in any way remove from the individual the responsibility to research and comply with all applicable statutory requirements for the filing and processing of an appeal of a commission decision with the circuit court. For legal advice, you may want to contact an attorney.

3. What are the summons and the complaint?

The summons is a document that notifies the defendants that a case has been filed against them and tells them their responsibility to file an answer with the court. The complaint is a separate document that states who the parties are and the reasons for the lawsuit.

4. Who are the defendants in an unemployment case?

The commission and the department are defendants in an unemployment case, and must be named as defendants in the pleadings. Every other party to the proceedings before the commission must also be named as defendants in the pleadings. The other parties to the proceedings before the commission generally are the party or parties listed in the caption on the first page of the commission decision.

5. Will the commission help me draft the summons and the complaint?

No. When you file an appeal of the commission decision, you are suing the commission. As a defendant, the commission will defend its decision in the court action. The commission cannot help you draft the summons and the complaint or provide legal advice regarding an appeal.

6. Who must sign the summons and the complaint documents?

The plaintiff must sign both the summons and the complaint. If the plaintiff is a corporation or an LLC (limited liability company), the summons and the complaint must be signed by an attorney. Corporations and LLCs must be represented by an attorney in order to file legal proceedings with a court.

7. What are “authenticated pleadings”?

“Authenticated pleadings” are documents that have been stamped by the clerk of the circuit court when the case is filed. The authenticated pleadings show that the action was filed and the case number and that they are exactly the same as the documents on file with the court.

8. Where do I file the summons and the complaint?

The summons and the complaint must be filed in the circuit court of the Wisconsin county where the plaintiff resides, except:

- If the plaintiff is the Department of Workforce Development (department), the proceedings must be in the circuit court of the Wisconsin county where the defendant other than the commission resides.
- If the plaintiff is a nonresident of Wisconsin, the proceedings generally must be in the Wisconsin county where the claim arose. See Wis. Stat. §801.50(2)(a).
- The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after notice and hearing, so orders.
- For other circumstances, see Wis. Stat. §801.50 *et seq.*

This is a link to Wisconsin circuit court websites for contact information of individual circuit courts:

<http://www.wicourts.gov/contact/ccsites.htm>

9. Is there a fee for filing a circuit court action to review the commission decision?

No. A court clerk should not charge a filing fee for review of an unemployment insurance commission decision. See §108.09(7)(i) of the Wisconsin Statutes.

10. Can I file the summons and the complaint in another state if I am not a Wisconsin resident?

No. The action must be brought in a Wisconsin circuit court.

This is a link to Wisconsin circuit court websites for contact information of individual circuit courts:

<http://www.wicourts.gov/contact/ccsites.htm>

11. Can I bring my appeal of the commission’s decision in small claims court?

No. You must bring your appeal in the regular circuit court. The procedures of the small claims court do not apply to appeals of commission decisions under the unemployment insurance program.

12. Can I bring my appeal of the commission’s decision under the Administrative Procedures Act, chapter 227, by filing and serving a petition naming the commission as a respondent?

No. You must bring your appeal by filing a summons and a complaint that makes the commission, the department, and every other party to the proceedings before the commission defendants. The provisions of the Administrative Procedures Act in chapter 227 do not apply to appeals of commission decisions under the unemployment insurance program.

13. When must I file an appeal? What is the appeal deadline?

You must file your sets of the summons and the complaint with the court and then serve the authenticated pleadings on the commission within 30 calendar days of the date the commission decision was mailed to you. The commission must receive the authenticated pleadings at its offices in Madison within the 30-day time period so you must allow sufficient time for the mail to reach the commission if you mail the documents. It is not sufficient for the appeal to be postmarked by the deadline.

14. How do I “serve” authenticated pleadings (the stamped summons and complaint documents) on the commission?

The authenticated pleadings may be mailed to the commission or delivered in person. You must serve a commissioner or an agent authorized by the commission to accept service. Authorized agents are staff members at the commission. The commission must receive the authenticated pleadings at its offices in Madison within the 30-day time period so you must allow sufficient time for the mail to reach the commission if you mail the documents. It is not sufficient for the appeal to be postmarked by the deadline.

For service in person:

Labor and Industry Review Commission
3319 West Beltline Highway, 2 West
Madison WI 53713

For delivery by U.S. Postal Service:

Labor and Industry Review Commission
P.O. Box 8126
Madison WI 53708

The commission is open Monday through Friday from 7:45 a.m. to 4:30 p.m. except for holidays.

You cannot serve the authenticated summons and complaint by FAX or e-mail.

15. How many sets of the authenticated pleadings do I need to serve on the commission?

You must serve as many sets of authenticated pleadings as there are defendants. The commission and department are each defendants. Every other party to the proceedings before the commission is also a defendant.

16. How does a court review the commission decision?

The court will review the record on appeal. The court will **not** hold a new hearing. The court will assign a schedule for each party to submit written arguments or briefs, and any party may request oral argument before the court on the legal issues in the case. Courts may not make new findings of fact on appeal and generally give deference to the commission's legal conclusions. The reasons the commission decision may be overturned by a circuit court are limited by statute. Those reasons are stated in subdivision 108.09(7)(c)6. and paragraph (7)(f) of the Wisconsin Statutes. See, <https://docs.legis.wisconsin.gov/statutes/statutes/108.pdf>. Generally, to overturn a commission decision, a court must find that the commission acted without or in excess of its powers in making its decision, or that the findings of fact by the commission do not support its decision.

17. How long will it take for the court to decide my case?

It is hard to predict how long a circuit court will take to decide a case. Once the summons and the complaint are filed and authenticated pleadings are served on the commission, the defendants must file an answer and respond to the complaint. In some cases, a defendant may file a motion to dismiss. The court schedules the timing of filing briefs by the parties. Once all of the issues have been briefed, the court will review the record and the briefs and write a decision. The time this takes will vary with each court.

18. I have a decision by the administrative law judge or appeal tribunal. Can I appeal this decision to the circuit court?

No. A decision of the appeal tribunal by an administrative law judge must be appealed to the commission. The commission must issue its decision before the action may be filed in the circuit court.

If you need to appeal a decision of an appeal tribunal of an administrative law judge or appeal tribunal decision to the commission, please see http://lirc.wisconsin.gov/ui_appeal.htm.

19. The commission decision allows me unemployment benefits. If there is an appeal, will I still receive my benefits or continue to receive my benefits?

Yes. If you are otherwise eligible and continue filing claims for benefits, you should continue to receive benefits while the appeal is pending. To file a claim for unemployment benefits, please see <https://my.unemployment.wisconsin.gov>.

20. The commission decision denies my unemployment benefits and I am appealing. Should I continue to file claims for weeks for which I want to receive benefits?

Yes. If you do not file claims for weeks you are unemployed, you will not be eligible for benefits for those weeks even if the decision is overturned on appeal. To file a claim for unemployment benefits, please see <https://my.unemployment.wisconsin.gov>.

21. Who can assist me if I want to appeal the commission decision?

When you file an appeal of the commission decision, you are suing the commission. As a defendant, the commission will defend its decision in the court action. The commission cannot help you draft the summons and the complaint or provide legal advice regarding an appeal. You may want to contact an attorney.

22. Who can I call with questions regarding unemployment benefits?

For questions regarding your benefit claims, go online at <https://my.unemployment.wisconsin.gov>. For help using online services or if you are truly unable to go online, contact the Wisconsin Unemployment Help Center at 414-435-7069. This is a link to the Unemployment Insurance Claimant Handbook: <https://dwd.wisconsin.gov/uiben/handbook>.

23. Who can I call with questions regarding an unemployment insurance benefit overpayment?

For questions regarding an overpayment of benefits, you may contact the Department of Workforce Development at 1-608-266-9701.

24. If I am an employer, who can assist me with questions regarding my unemployment insurance taxes?

For claim inquiries or assistance, you may contact the Department of Workforce Development at 414-438-7705 or 608-232-0633. This is a link to the Unemployment Insurance Employer Handbook: <https://dwd.wisconsin.gov/ui201>.

25. Where else can I find information regarding the unemployment insurance program?

How to apply for unemployment benefits:

https://dwd.wisconsin.gov/uiben/apply_online.htm

Frequently asked questions about filing for unemployment benefits:

<https://dwd.wisconsin.gov/uiben/benfaq1.htm>

How to file an appeal of a department initial determination:

<https://dwd.wisconsin.gov/uibola/appeal.htm>

Frequently asked questions about appeal tribunal hearings:

<https://dwd.wisconsin.gov/uibola/faqs>

How to appeal an appeal tribunal decision to the commission:

http://lirc.wisconsin.gov/ui_appeal.htm

Frequently asked questions about appeals, benefit claims, benefit fraud, new hire reporting, quarterly wage reporting, tax and accounting, tax collections, and financing/tax rates:

<https://dwd.wisconsin.gov/ui/admin/faqs/faqs.htm>

To report unemployment fraud:

<https://dwd.wisconsin.gov/ui/fraud>