

Frequently Asked Questions (“FAQs”) about Appealing a Worker’s Compensation 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 worker’s compensation 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 applicant, 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 two 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 102.23 of the Wisconsin statutes governs appeals of commission worker’s compensation decisions and is the exclusive method for appealing commission worker’s compensation 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/wcsummonsandcomplaintforms.htm>. These sample forms are designed for use only in cases in which an applicant (employee) is seeking court review of a decision of the commission involving a claim for worker’s compensation benefits. 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. 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 a state agency, the proceedings must be in the circuit court of the Wisconsin county where the defendant 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 stipulate and that court agrees.
- 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>

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

No. A decision of the 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 administrative law judge to the commission, please see <http://dwd.wisconsin.gov/lirc/petition.htm>

5. 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 a worker's compensation commission decision. See §102.26 of the Wisconsin statutes.

6. 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. Parties generally have twenty (20) days to file an answer to a complaint; however, some parties, including insurance companies, and the state or state agencies, agents or employees, are allowed up to forty-five (45) days to respond. The complaint is a separate document that states who the parties are and the reasons for the lawsuit.

7. Who are the parties in that must be named in the summons and the complaint?

The summons and the complaint must name the party beginning the action as the plaintiff. The summons and the complaint must also name as defendants:

- the commission; and
- all persons, other than the party beginning the action, identified by the commission in its order or award as persons that must be made parties to an action for review of the order or award.

8. Can 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.

9. 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 is represented by the Wisconsin Department of Justice and will defend its decision in the court action. The commission and the Department of Justice cannot help you draft the summons and the complaint or provide legal advice regarding an appeal. You may want to contact an attorney.

10. 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.

11. 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.

12. 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>

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 delivery by private carrier or 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 offices are 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. 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 worker’s compensation program.

16. 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. The provisions of the Administrative Procedures Act in chapter 227 do not apply to appeals of commission decisions under the worker’s compensation program.

17. How does a court review the commission decision?

The court will review the record on appeal. The court will **not** hold a new hearing. Generally, courts assign a schedule for each party to submit written arguments or briefs. Occasionally courts schedule in-person arguments 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 subsections (1)(e) and (6) of Sec. 102.23 of the Wisconsin statutes. See, <http://nxt.legis.state.wi.us/nxt/gateway.dll?f=templates&fn=default.htm&d=stats&jd=102.23>. 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.

18. 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 commission must file an answer and respond to the complaint. In some cases, the commission 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.