

The Labor and Industry Review Commission proposes an order to: **repeal** LIRC 2 (title), 2.01 (title), (1), and (3), 3 (title), 3.01, 3.03, 3.05, 4 (title), and 4.04; **renumber** LIRC 1.026, 1.03, 1.04 (4) to (7), 1.045, 1.05 NOTE, 1.06, 1.07, 2.015 (2) to (4) and (6), and 4.03; **renumber and amend** LIRC 1.027, 1.04 (intro.) and (1) to (3), 1.05, 2.01 (2), 2.015 (title), (1), (5), and (7), 2.05, 3.04, 4.01, and 4.03 (title); **amend** LIRC 1.01, 1.015, and 1.025 (1), (3), (4); **repeal and recreate** LIRC 1 (title); and **create** 1.015 (3) to (8), and 1.025 (1e), (1m), (2) (title), (3) (b) 1., (4) NOTE, and (5) (title), **relating to** the rules of procedure of the labor and industry review commission.

Section 1. LIRC 1 (title) is repealed and recreated to read:

LIRC 1 (title) LABOR AND INDUSTRY REVIEW COMMISSION PROCEDURE

Section 2. LIRC 1.01 is amended to read:

LIRC 1.01 General. The labor and industry review commission has jurisdiction for review of cases arising under ss. 40.65 (2), ~~66.191, 1981 Stats., ss. 59.88, 62.624, 102.18 (3) and (4), 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., and s. 66.191, 1981 Stats.~~

Section 3. LIRC 1.015 is amended to read:

LIRC 1.015 Definitions. In this chapter:

(1) ~~In chs. LIRC 1 to 4, “commission”~~ “Commission” means the ~~Wisconsin~~ labor and industry review commission.

(2) ~~In chs. LIRC 1 to 4, “department”~~ “Department” means the ~~Wisconsin~~ department of workforce development.

Section 4. LIRC 1.015 (3) to (8) are created to read:

LIRC 1.015 (3) “Division of hearings and appeals” means the division of hearings and appeals in the department of administration.

(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 in the department.

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

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

(8) “Worker’s compensation case” means a case in which the commission has jurisdiction under ss. 40.65, 59.88, 62.624, 102.18 (3) or (4), 303.07 (7), or 303.21, Stats., or s. 66.191, 1981 Stats.

Section 5. LIRC 1.025 (1) is amended to read:

LIRC 1.025 (1) WHEN PETITIONS CONSIDERED FILED. Petitions for review may be filed by mail or personal delivery. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the ~~commission or by the division of the department office~~ office to

which the petition is mailed or delivered, except that petitions for review in unemployment insurance cases ~~under s. 108.09 or 108.10, Stats., and worker's classification compliance cases~~ which are filed by mail or personal delivery are deemed filed when received or postmarked as provided for in s. LIRC ~~2.015~~ 1.03.

Section 6. LIRC 1.025 (1e), (1m), and (2) (title) are created to read:

LIRC 1.025 (1e) UNEMPLOYMENT INSURANCE AND WORKER CLASSIFICATION COMPLIANCE PETITIONS. (a) A petition in an unemployment insurance case or worker classification compliance case shall be filed with the commission by one of the following methods:

1. By personal delivery at the commission's office at 3319 West Beltline Highway, 2nd Floor, Madison, Wisconsin 53713.
2. By mail to the commission's office at 3319 West Beltline Highway, P.O. Box 8126, Madison WI 53708.
3. On the commission's website as provided in sub. (4).
4. By facsimile transmission to (608) 257-4409.

(1m) WORKER'S COMPENSATION PETITIONS. A petition in a worker's compensation case shall be filed with any of the following:

(a) The commission by any of the following methods:

1. By mail to 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.
2. By personal delivery to 3319 West Beltline Highway, Madison Wisconsin 53713.
3. By facsimile transmission to (608) 267-4409.
4. On the commission's website as provided in sub. (4).

(b) The division of hearings and appeals by any of the following methods:

1. By mail or personal delivery to 4822 Madison Yards Way, 5th Floor North, Madison, Wisconsin 53705, or by facsimile transmission to (608) 266-0018.
2. By mail or personal delivery to 819 North Sixth Street, Room 330, Milwaukee, Wisconsin 53203, or by facsimile transmission to (414) 227-4012.
3. By mail or personal delivery to 54 Park Place, Suite 900, Appleton, Wisconsin 54914, or by facsimile transmission to (920) 832-5355.

(c) The worker's compensation division of the department by any of the following methods:

1. By mail to 201 East Washington Avenue, P.O. Box 7901, Madison, Wisconsin 53707.
2. By personal delivery to 201 East Washington Avenue, Madison, Wisconsin 53703.
3. By facsimile transmission to (608) 267-0394.

LIRC 1.025 (2) (title) LIMIT ON FILING BY ELECTRONIC DATA TRANSMISSION.

Section 7. LIRC 1.025 (3) is amended to read:

LIRC 1.025 (3) PETITIONS FILED BY FACSIMILE TRANSMISSION. (a) Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not

deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission, the division of hearings and appeals, or of the division of the department to which the petition is being transmitted. 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) 2. Except in the case of as provided in subd. 3., a petition for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats., where a~~ an equal rights case transmitted by facsimile transmission filed after the regular business hours of the equal rights division shall be is considered filed on the next business day, a petition for review transmitted by facsimile is deemed filed on the date of transmission recorded and printed by the facsimile machine on the petition.

3. If the commission's, the division of hearings and appeals', or department's records indicate receipt of the facsimile at a date later than that shown the date of transmission recorded and printed by the recipient facsimile machine, then the later date shall control.

Section 8. LIRC 1.025 (3) (b) 1. is created to read:

LIRC 1.025 (3) (b) 1. Except as provided in subds. 2 and 3., a petition for review transmitted by facsimile transmission is considered filed on the date of transmission recorded and printed by the recipient facsimile machine.

Section 9. LIRC 1.025 (4) is amended to read:

LIRC 1.025 (4) PETITIONS FILED ON THE COMMISSION'S WEBSITE. ~~Except in the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats. in equal rights cases,~~ petitions for review may be filed electronically through the internet website of the commission, ~~at the page found at <http://dwd.wisconsin.gov/lirc/petition.htm>.~~

(b) Successful filing of a petition for review electronically through the internet website of the commission will result in a display on the petitioner's internet browser of a message confirming that the petition has been successfully filed. A petition for review transmitted electronically through the website of the commission is not deemed filed unless and until the confirmation message is displayed.

(c) 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 deemed filed on the date of filing stated on the commission's electronic record of the filing.

Section 10. LIRC 1.025 (4) NOTE is created to read:

LIRC 1.025 (4) NOTE: The webpage for filing a petition in an unemployment insurance case or worker classification compliance case online is https://lirc.wisconsin.gov/ui_appeal.htm. The webpage for filing a petition in a worker's compensation case online is https://lirc.wisconsin.gov/wc_appeal.htm.

Section 11. LIRC 1.025 (5) (title) is created to read:

LIRC 1.025 (5) (title). NO FILING BY TELEPHONE.

Section 12. LIRC 1.026, 1.027, 1.03, 1.04, 1.045, 1.05, 1.05 NOTE, 1.06, and 1.07 are renumbered LIRC 1.04, 1.05, 1.06, 1.07, 1.08, 1.09, 1.09 NOTE, 1.10, and 1.11, and, as renumbered, LIRC 1.05, 1.07 (intro.), (1), (2), and (3), and 1.09 are amended to read:

LIRC 1.05 Answers. A party opposing a petition for commission review may file an answer with the commission within 21 days from the party's receipt of a copy of the petition, but the commission may decline to consider an answer received after the commission has reached a decision on the petition even if it has not yet issued a written decision when the answer is filed. A party filing an answer with the commission shall furnish a copy to the opposing party.

LIRC 1.07 Record used for review. Review by the commission shall be based on the record of the case including the evidence previously submitted at hearing before the department or division of hearings and appeals. The record of the hearing may be in the form of a written synopsis or a transcript, and may include an audio recording of the hearing. The form of the record of the hearing which the commission uses in its review shall be determined as follows:

(1) Except as provided in subs. (2) through (5), the commission shall base its review on a written synopsis of the testimony taken at the hearing. The synopsis shall be prepared by the department, by the division of hearings and appeals, the commission, or ~~by~~ an outside contractor, from an audio recording of the hearing or from notes taken at the hearing by the administrative law judge. In those cases any party may obtain a copy of the synopsis as provided for in s. LIRC ~~1.045~~ 1.08.

(2) The commission shall base its review on a transcript of the hearing rather than a synopsis if a transcript was prepared and was used by the administrative law judge in deciding the case. In such cases any party may obtain a copy of the transcript as provided for in s. LIRC ~~1.045~~ 1.08.

(3) Except in unemployment insurance cases and worker classification compliance cases, the commission shall base its review on a transcript of the hearing rather than a synopsis if a party timely requests the commission in writing to conduct its review on the basis of a transcript, the party certifies in such request that it has ordered preparation of a transcript at the party's own expense, and the party thereafter files a copy of the transcript with the commission and serves a copy of the transcript on all other parties. To be timely under this subsection, a request must be made no later than 14 days after the requesting party's receipt from the commission of written confirmation that a petition for commission review has been filed.

1.09 Hearings. ~~If~~ Except in equal rights cases, if the record in a case is inadequate for the commission to arrive at a decision, the commission shall remand the case to the department ~~of workforce development~~ or division of hearings and appeals, as appropriate, to take additional evidence on behalf of the commission.

Section 13. LIRC 2 (title), 2.01 (title) and (1) are repealed.

Section 14. LIRC 2.01 (2) is renumbered LIRC 1.025 (1e) (b), and amended to read:

LIRC 1.025 (1e) (b) A petition filed by an interstate claimant may be filed ~~at one of the locations in sub. (1)~~ as provided in par. (a) or with a qualified employee of the agent state in which the interstate claimant files his or her claim.

Section 15. LIRC 2.01 (3) is repealed.

Section 16. LIRC 2.015 is renumbered LIRC 1.03 and, as renumbered, LIRC 1.03 (title), (1), (5), and (7) are amended to read:

LIRC 1.03 (title) Timeliness of petitions in unemployment insurance cases and worker classification compliance cases.

(1) If the petition is personally delivered, the petition is “received” when the ~~division of unemployment insurance of the department or the~~ commission physically receives the petition.

(5) If the petition is mailed and bears no mark, or bears an illegible mark, the petition is “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.

(7) If the petition 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 delivery service mark, the petition is “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 17. LIRC 2.05 is renumbered LIRC 1.14 and amended to read:

LIRC 1.14 Actions for judicial review in unemployment insurance cases, worker classification compliance cases, and worker’s compensation cases. ~~Judicial~~ On judicial review of any a commission decision under s. 108.09 or 108.10, Stats., shall be commenced in the manner and upon the grounds specified in ss. 108.09 (7) and 102.23, Stats., and not under ch. 227 or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court within 30 days from the date the decision was mailed to the party’s last known address. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must 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 shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service in an unemployment insurance case, a worker classification compliance case, or a worker’s compensation case, service by mail is effective only if the pleadings are actually received by the commission 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 decision was made shall also be made a defendant. 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 defendant resides. If the plaintiff is a non-resident 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. The party seeking judicial review shall arrange for preparation of the necessary legal documents.

Section 18. LIRC 3 (title), 3.01, and 3.03 are repealed.

Section 19. LIRC 3.04 is renumbered LIRC 1.13 and amended to read:

LIRC 1.13 Compromise settlements in worker's compensation cases. ~~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~~ division of hearings and appeals or department, 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 division of hearings and appeals or department, as appropriate, for consideration of the compromise.~~

Section 20. LIRC 3.05 and 4 (title) are repealed.

Section 21. LIRC 4.01 is renumbered LIRC 1.025 (1s) and, as renumbered, is amended to read:

LIRC 1.025 (1s) ~~Petitions for commission review; where filed.~~ EQUAL RIGHTS PETITIONS. A petition for commission review ~~of the findings and order of a department of workforce development administrative law judge under s. 106.52 or 111.39 (5), Stats.,~~ in an equal rights case shall be filed with the equal rights division ~~of the department at~~ by any of the following ~~locations~~ methods:

(a) ~~The equal rights division,~~ By mail or personal delivery to 819 North Sixth Street, Milwaukee, Wisconsin 53203 (FAX: 414-227-4981) or by facsimile transmission to (414) 227-4084.

(b) ~~The central administrative office of the equal rights division,~~ By mail to 201 East Washington Avenue, P.O. Box 8928, Madison, Wisconsin 53708 (FAX: 608-267-4592); by personal delivery to 201 East Washington Avenue, Madison, Wisconsin 53703; or by facsimile transmission to (608) 327-6001.

Section 22. LIRC 4.03 is renumbered LIRC 1.12 and, as renumbered, LIRC 1.12 (title) is amended to read:

LIRC 1.12 (title) Rehearings in equal rights cases.

Section 23. LIRC 4.04 is repealed.

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.