

Attachment A

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE LABOR AND INDUSTRY REVIEW COMMISSION	PROPOSED ORDER OF LABOR AND INDUSTRY REVIEW COMMISSION ADOPTING RULES (CLEARINGHOUSE RULE 21-105)
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PROPOSED ORDER

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, 1.06 NOTE, 1.07, 2.015 (2) to (4) and (6), and 4.03; **renumber and amend** LIRC 1.015, 1.025 (3), 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 (1) and (2), and 1.025 (1), (2), (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) (a) 1. and 2., and (5) (title), **relating to** the rules of procedure of the labor and industry review commission.

The scope statement for this rule, SS 066-21, was approved by the Governor on July 29, 2021, published in Register No. 788A2 on August 9, 2021, and approved by the Chairman of the Labor and Industry Review Commission on September 13, 2021.

Analysis by the Labor and Industry Review Commission

Statutes interpreted: None

Statutory authority: Wis. Stat. § 103.04(2)

Explanation of agency authority:

“103.04 Labor and industry review commission.

...

“(2) Notwithstanding s. 227.11, the commission may not promulgate rules except that it may promulgate its rules of procedure.”

“108.09 Settlement of benefit claims.

...

“(5) PROCEDURE.

...

“(b) All testimony at any hearing under this section shall be recorded by electronic means, but need not be transcribed unless either of the parties requests a transcript before expiration of that party’s right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission....

“(6) COMMISSION REVIEW. (a) The department or any party may petition the commission for review of an appeal tribunal decision, pursuant to rules promulgated by the commission, if the petition is received by the commission or postmarked within 21 days after the appeal tribunal

decision was electronically delivered to the party or mailed to the party's last-known address....”

Related statutes or rule: Wis. Stat. §§ 40.65 (2), 59.88, 62.624, 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.095 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, 1981 Wis. Stat. § 66.191.

Plain language analysis:

The Labor and Industry Review Commission's (commission) proposed rule order addresses rules identified as unnecessary or conflicting with statutory provisions, pursuant to the process contained in Wis. Stat. § 227.29. The commission also generally reviewed its rules for accuracy and completeness. The commission also seeks to simplify its rules by combining them into a single chapter. Generally, the proposed rule updates addresses, phone numbers, and web addresses that have changed since the rule was last modified in 2006, and makes other minor changes to reflect statutory changes occurring since then.

In LIRC 1, the general operating rules for the commission, the proposed rule order is revised to reflect statutory changes giving the commission jurisdiction for review in worker classification compliance cases under Wis. Stat. § 103.06(6)(c) (enacted by 2009 Wis. Act 292), cases involving false statements made with respect to an unemployment insurance claim to obtain benefits payable to another person under Wis. Stat. § 108.095(6) (enacted by 1999 Wisconsin Act 15), and cases involving certain local government duty disability benefits under Wis. Stat. § 59.88 and 62.624 (2015 Wis. Act 55, Sections 1923p and 1948L). The proposed rule also adds definitions to be used generally in the rules. In recognition of the fact that unemployment insurance decisions are subject to time lapse standards, the proposed rule shortens the time period for filing an answer to a petition from 21 to 14 days. The proposed rule also makes a number of stylistic changes to improve clarity and conform to current rule drafting practices.

The proposed rule merges LIRC 2, regarding procedural rules for filing petitions for commission review of unemployment insurance appeal tribunal decisions, with LIRC 1. The proposed rule reflects statutory changes providing that petitions may no longer be filed with the Department of Workforce Development (Wis. Stat. § 108.09(6), as affected by 2015 Wis. Act 334, Section 50). The proposed rule also reflects current LIRC practice which permits the filing of petitions for review in unemployment insurance and worker classification compliance cases in several ways including by mail, by fax, in person at the commission's office, or online at the commission's website. The rule is further revised to reflect that the provisions contained in LIRC 2 also pertain to review of appeal tribunal decisions regarding worker classification compliance, pursuant to Wis. Stat. § 103.06(6)(c). The revised rule also deletes the provisions relating to judicial review that restate statutory provisions regarding appealing commission decisions to circuit court and are therefore redundant, except with respect to a provision allowing service of pleadings in actions for judicial review on the commission by mail, which is retained.

The proposed rule merges LIRC 3, regarding procedural rules for filing petitions for commission review of worker's compensation cases, with LIRC 1. The proposed rule updates the location at which petitions for commission review in worker's compensation cases may be filed to reflect statutory changes permitting petitions to be filed with the commission, the Division of Hearings and Appeals of the Department of Administration, or the Department of Workforce Development (see Wis. Stat. § 102.18(3), as affected by 2015 Wis. Act 55, Section 2831d) and clarifies that petitions may be filed in several ways including by mail, by fax, in person, or online at the commission's website. The proposed rule also provides for the remand of compromises to the Division of Hearings and Appeals to reflect amendments to Wis. Stat. §§ 102.18 (4)(d) by Wis. Act. 55, Sections 2843d, and 2847d. The revised rule also deletes the provisions relating to judicial review that restate statutory provisions regarding appealing

commission decisions to circuit court and are therefore redundant, except with respect to provisions allowing service of pleadings in actions for judicial review on the commission by mail which is retained.

The proposed rule merges LIRC 4, regarding procedural rules for filing petitions for commission review of equal rights administrative law judge decisions, with LIRC 1. The revised rule also deletes the provisions relating to judicial review that restate statutory provisions regarding appealing commission decisions to circuit court and are therefore redundant.

Summary of, and comparison with, existing or proposed federal regulations: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comments received during preliminary comment period. The commission solicited comments concerning its scope statement from the bureau of legal affairs in the unemployment insurance division in the department of workforce development; the equal rights division in the department of workforce development; the worker's compensation division in the department of workforce development; and the division of hearings and appeals in the department of administration. The commission also posted its scope statement and a draft of the proposed rules on its website on November 22, 2021. The only comment the commission received concerned retaining language in current §§ LIRC 2.05 and 3.05 dealing with acceptance of service of pleadings in actions for judicial review by mail, and the commission's proposed rules include a provision retaining that language.

Comparison with rules in adjacent states:

Illinois and Iowa have administrative rules governing procedures by administrative appellate bodies for review of decisions following hearings in unemployment insurance, workers compensation, and equal rights cases. Michigan has administrative rules governing procedures by administrative appellate bodies for review of decisions following hearings in unemployment insurance and workers compensation cases. Minnesota has administrative rules governing procedures by the Minnesota workers' compensation court of appeals for review of decisions following hearings in workers compensation cases. Those rules, which are generally consistent with changes to the commission's procedure made in the proposed rule order, are:

- Ill. Admin. Code tit. 50, sections 9040.10 to 9040.80 (Review by Illinois Workers' Compensation Commission)
- Ill. Admin. Code tit. 56, sections 2720.300 to 2720.245 (Appeals to Board of Review – Unemployment Insurance)
- Ill. Admin. Code tit. 56, sections 5300.910 to 5300.1170 (Review by Illinois Human Rights Commission of administrative law judge decisions regarding civil rights violations involving labor and employment)
- Iowa Admin. Code Rule 161.4.23 et seq. (Review of contested case decisions involving discrimination in employment by Iowa Civil Rights Commission)
- Iowa Admin. Code Rule 486.3.1 et seq. (Unemployment insurance appeals before Iowa Employment Appeal Board)
- Iowa Admin. Code Rule 876.4.27 et seq. (Review of workers compensation contested cases by Iowa Workers' Compensation Commissioner)
- Mich. Admin. Code Rule 37.16 to 37.18 (Fair employment and employment discrimination decisions of the Michigan Civil Rights Commission are appealed to circuit court)
- Mich. Admin. Code Rules 792.11314 to 792.11321 (Workers compensation appeals before the Michigan, Workers' Disability Compensation Appeals Commission created in Executive Reorganization Order No. 2019-13)
- Mich. Admin. Code Rule 792.11417 to 792.11433 (Unemployment insurance appeals before the Michigan Unemployment Insurance Appeals Commission created in Executive Order No. 2019-13)

Minn. Admin. Code Rule 9800.0100 to 9800.1800 (Rules of procedure before the Minnesota Workers' Compensation Court of Appeals)

Summary of factual data and analytical methodologies: No factual data or analytical methodologies were used in the preparation of the proposed rule. The proposed rule pertains only to procedure before the commission. It does not establish regulatory standards and includes no substantive or interpretative provisions.

Analysis and supporting documents used to determine effect on small business:

The proposed rule makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector: The proposed rule does not have a fiscal effect on the private sector.

Fiscal Estimate and Economic Impact Analysis: The Fiscal Estimate and Economic Impact Analysis document is attached. The proposed rule pertains only to procedure before the commission. It does not establish regulatory standards and include no substantive or interpretative provisions. There are no anticipated fiscal impacts on state funds, or the liability or revenues of any local unit government. The proposed rule will have no economic impact locally or statewide.

Effect on small business: This proposed rule does not affect small business.

Agency contact person: Please contact Anita J. Krasno at anita.krasno@wisconsin.gov or (608) 266-5700, if you have any questions regarding this proposed rule, including substantive questions on the rules or the internal processing of the rules.

Public Hearing: A public hearing is scheduled on this proposed rule order for:

Wednesday, January 26, 2022
9:00 a.m. to 10:30 a.m.

Room W411A
3319 West Beltline Highway, Fourth Floor
Madison, WI 53713

Virtual Location Link: [Click here to join the meeting](#)

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3ArV2ptNq0s6i1WG52bHw2qYkcf-uHOHBPR9YRQFHERZY1%40thread.tacv%2F1638822117279%3Fcontext%3D%257b%2522id%2522%253a%2522f4e2d11c-fae4-453b-b6c0-2964663779aa%2522%252c%2522oid%2522%253a%2522051359ad-dd18-4b26-aa49-1ced34c5442f%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=9fa27416-70cf-4ce6-b404-89c25d8f573d&directDI=true&msLaunch=true&enableMobilePage=false&suppressPrompt=true

Place where comments are to be submitted and deadline for submission: Comments may be submitted no later than 4:30 p.m. on Friday, January 28, 2022, by email to LIRC@wisconsin.gov; or to <https://docs.legis.wisconsin.gov/code/chr/comment>; or by mail to

Labor and Industry Review Commission
3319 West Beltline Highway

Text of rule

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), 108.095(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 renumbered LIRC 1.015 (intro.) amended to read:

LIRC 1.015 Definitions. (intro.) In this chapter:

Section 4. LIRC 1.015 (1) and (2) are amended to read:

(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 5. 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), 108.095(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 s. 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 6. 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 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 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~~ 1.031.

Section 7. LIRC 1.025 (1e), (1m), and (2) (title) are created to read:

LIRC 1.025 (1e) UNEMPLOYMENT INSURANCE AND WORKER CLASSIFICATION COMPLIANCE PETITIONS; HOW TO FILE. (a) Except as provided in par. (b), 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, WI 53713.
2. By mail to the commission's office at 3319 West Beltline Highway, P.O. Box 8126, Madison, WI 53708.
3. By facsimile transmission to (608) 267-4409.
4. On the commission's website as provided in sub. (4).

(1m) WORKER'S COMPENSATION PETITIONS; HOW TO FILE. 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, WI 53708.
2. By personal delivery to 3319 West Beltline Highway, Madison, WI 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, WI 53705, or by facsimile transmission to (608) 266-0018.
2. By mail or personal delivery to 819 North Sixth Street, Room 330, Milwaukee, WI 53203, or by facsimile transmission to (414) 227-4012.
3. By mail or personal delivery to 54 Park Place, Suite 900, Appleton, WI 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, WI 53707.
2. By personal delivery to 201 East Washington Avenue, Madison, WI 53703.
3. By facsimile transmission to (608) 260-3053.

Section 8. LIRC 1.025 (2) is amended to read:

LIRC 1.025 (2) LIMIT ON FILING BY ELECTRONIC DATA TRANSMISSION. ~~Except as provided for in subs. (3) and (4), petitions~~ Petitions for review may not be filed by e-mail or, ~~except as provided in subs. (1), (3), and (4),~~ by any other method of electronic data transmission.

Section 9. LIRC 1.025 (3) is renumbered LIRC 1.025 (3) (a) and 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 10. 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 11. LIRC 1.025 (4) is amended to read:

LIRC 1.025 (4) PETITIONS FILED ON THE COMMISSION'S WEBSITE. (a) Except in ~~the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats. 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>.~~ at the following webpages:

(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 12. LIRC 1.025 (4) (a) 1. and 2. are created to read:

LIRC 1.025 (4) (a) 1. For a petition in an unemployment insurance case or worker classification compliance case, https://lirc.wisconsin.gov/ui_appeal.htm.

2. For a petition in a worker's compensation case, https://lirc.wisconsin.gov/wc_appeal.htm.

Section 13. LIRC 1.025 (5) (title) is created to read:

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

Section 14. LIRC 1.026, 1.027, 1.03, 1.04, 1.045, 1.05, 1.05 NOTE, 1.06, 1.06 NOTE, and 1.07 are renumbered LIRC 1.041, 1.051, 1.061, 1.071, 1.08, 1.09, 1.09 NOTE, 1.10, 1.10 NOTE and 1.11, and LIRC 1.051, 1.071 (intro.), (1), (2), and (3), and 1.09, as renumbered, are amended to read:

LIRC 1.051 Answers. A party opposing a petition for commission review may file an answer with the commission within ~~24~~ 14 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.

LIRC 1.071 Record used for review. (intro.) 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~~ those 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. ~~¶~~ 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 15. LIRC 2 (title), 2.01 (title) and (1) are repealed.

Section 16. 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 17. LIRC 2.01 (3) is repealed.

Section 18. LIRC 2.015 is renumbered LIRC 1.031 and LIRC 1.031 (title), (1), (5), and (7), as renumbered, are amended to read:

LIRC 1.031 (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 19. 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 appealing The party seeking judicial review shall arrange for preparation of the necessary legal documents.

Section 20. LIRC 3 (title), 3.01, and 3.03 are repealed.

Section 21. 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 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 for consideration of the compromise.

Section 22. LIRC 3.05 and 4 (title) are repealed.

Section 23. LIRC 4.01 is renumbered LIRC 1.025 (1s) and amended to read:

LIRC 1.025 (1s) ~~Petitions for commission review, where filed.~~ EQUAL RIGHTS PETITIONS; HOW TO FILE. 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, *Milwaukee*. By mail or personal delivery to 819 North Sixth Street, Milwaukee, Wisconsin WI 53203 (FAX: 414 227 4981) or by facsimile transmission to (414) 227-4084.~~

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

Section 24. LIRC 4.03 is renumbered LIRC 1.12 and LIRC 1.12 (title), as renumbered, is amended to read:

LIRC 1.12 (title) Rehearings in equal rights cases.

Section 25. LIRC 4.04 is repealed.

Section 26. 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.

(End of text of rule.)

Attachment B

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date November 16, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) LIRC 1 through LIRC 4	
4. Subject Labor and Industry Review Commission Procedure	
5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.427(1)(a), (k), (km), (m) and (ra)
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule No actual policy problem. The proposed rule pertains only to procedure before the commission. It does not establish regulatory standards and includes no substantive or interpretative provisions. The proposed rule updates addresses, phone numbers, and web addresses that have changed since the rule was last modified. It also reflects changes to where petitions for review may be filed in worker's compensation cases due to an amendment to Wis. Stat. § 102.18(3) in 2015 Wis. Act 55, Section 2831d, and in unemployment insurance and worker classification compliance cases due to an amendment to Wis. Stat. § 108.09(6) in 2015 Wis. Act 334, Section 50. It also modifies a provision dealing with remands in cases of compromises in worker's compensation made necessary by amendments to Wis. Stat. §§ 102.18 (4)(d) by Wis. Act. 55, Sections 2843d, and 2847d.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The commission has posted its proposed rules and scope statement on its website since November 22, 2021, and solicited comments but has received none. It believes the proposed minor changes to its procedural rules will not affect businesses, business sectors, local governmental units, or individuals.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) None	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Will bring agency procedural rules in compliance with state statutes and lessen the possibility for confusion or error by persons filing petition for review with the LIRC.

The alternative is to do nothing.

16. Long Range Implications of Implementing the Rule
Will lessen the possibility for confusion or error by persons filing petition for review with the LIRC.

17. Compare With Approaches Being Used by Federal Government
Not applicable

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
The proposed rules are similar to procedural rules governing worker's compensation procedures in neighboring states.

19. Contact Name Anita J. Krasno

20. Contact Phone Number 608 266-5700
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Attachment C



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **21-105**

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; to 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; to renumber and amend LIRC 1.015, 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); to amend LIRC 1.01, 1.015 (1) and (2), and 1.025 (1), (3), and (4); to repeal and recreate LIRC 1 (title); and to create LIRC 1.015 (3) to (8), and 1.025 (1e), (1m), (2) (title), (3) (b) 1., and (5) (title), relating to the rules of procedure of the labor and industry review commission.

Submitted by **LABOR AND INDUSTRY REVIEW COMMISSION**

12-07-2021 RECEIVED BY LEGISLATIVE COUNCIL.

12-15-2021 REPORT SENT TO AGENCY.

SG:PH

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

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Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

CLEARINGHOUSE RULE 21-105

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 7, consider creating the titles of sub. (1e) to read “UNEMPLOYMENT INSURANCE AND WORKER CLASSIFICATION COMPLIANCE PETITIONS; HOW TO FILE.” in order to distinguish this subsection from the other subsections addressing where to file and when a petition is considered filed.

a. In SECTION 7, consider creating the titles of sub. (1m) to read “WORKER’S COMPENSATION PETITIONS; HOW TO FILE.” in order to distinguish this subsection from the other subsections addressing where to file and when a petition is considered filed.

b. In SECTION 8, the first sentence of proposed s. LIRC 1.025 (3) (a) is unnecessary and may be stricken. The acceptability of filing by facsimile has been established in earlier subsections.

c. In SECTION 10, consider creating the two sentences in the NOTE as subds. (4) (a) 1. and 2.

d. Consider dividing SECTION 12 into separate sections: one containing the renumbered rules and one containing the renumbered and amended rules.

e. In SECTION 12, consider renumbering ss. LIRC 1.027 to 1.051 (1) and creating: “LIRC 1.051 (2). 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.”

f. In SECTION 12, proposed s. LIRC 1.071 (1) and (2), current language uses “in such cases” in one subsection and “in those cases” in the other. Consider making those consistent or striking both and starting each sentence with “Any party may obtain a copy...”

g. In SECTION 21, consider creating separate paragraphs for each method of filing; in the alternative, consider creating two paragraphs entitled “Milwaukee” and “Madison” and listing each method of filing as subdivisions under those paragraphs.

Attachment D

From: [O'Malley, Jim T - DWD](#)
To: [LIRC](#)
Cc: [Peters, Steve M - DWD](#)
Subject: COMMENTS ON LIRC'S PROPOSED RULE CR 21-105
Date: Thursday, January 27, 2022 4:22:37 PM

I am sending this e-mail message to follow-up with my comments made at the public hearing held on Wednesday, January 26, 2022, about the Worker's Compensation Division's (WCD) request to modify two (2) provisions in the administrative rules proposed by the Labor and Industry Review Commission (LIRC).

In s. LIRC 1.025 (1m) (c) 3., we request the WCD's litigated fax number (608) 260-3053 to be used in this subdivision. We believe that it is advisable to list the litigated fax number for submitting petitions for review in LIRC's rule. For the fax with this number documents will be sent to a work queue that is monitored by our staff on a daily basis. Documents sent to the litigated fax number will be promptly reviewed and routed correctly.

Section LIRC 1.13 covers the remand of cases when compromise settlements in worker's compensation cases are received while pending on appeal at LIRC or Circuit Court. The language in the proposed rule states that when appeals are pending, LIRC shall remand the case to the division of hearings and appeals or the department when compromises are received, as appropriate, for consideration of the compromise. The language "as appropriate" is vague and subject to different interpretation. The language in this section should be more clear. We request the language be modified to reflect a case will be remanded to the agency that issued the order that was appealed. Cases with orders issued by administrative law judges from the Division of Hearings and Appeals should be remanded to that agency for consideration of compromise settlements, and cases with orders issued by administrative law judges from the WCD should be remanded to the WCD for consideration.

Some language to consider in modifying s. LIRC 1.13 is as follows:

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, directly to the agency that issued the order for which the petition was filed, 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, directly to the agency that issued the order for which the petition was filed, for consideration of the compromise.

Please feel free to contact me if there are any questions.

Thank you very much for providing us the opportunity to comment on the new administrative rules that LIRC is now promulgating.