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*G. Stoen*  
Director of Statutes  
Bureau

STATE OF WISCONSIN )  
 ) SS  
LABOR & INDUSTRY REVIEW COMMISSION )

I, David A. Pearson, Chairman of the Labor and Industry Review Commission, and custodian of the official records do hereby certify that the annexed rules relating to the petition to and handling of cases by the Labor and Industry Review Commission, were duly approved and adopted by this Commission on

I further certify that this copy has been compared by me with the original on file in this Commission and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREON, I have hereunto set my hand and affixed the official seal of the Labor and Industry Review Commission at 201 East Washington Avenue in the city of Madison, this 21<sup>st</sup> day of November, 1984.

  
\_\_\_\_\_  
David A. Pearson, Chairman

ORDER OF  
THE LABOR AND INDUSTRY REVIEW COMMISSION

To repeal LIRC 2.05, 3.03 and 4.02; to renumber LIRC 1.04, 1.05, 3.05, 4.04 and 4.05; to renumber and amend LIRC 1.03, 2.06, 3.04, 3.06, 3.07 and 4.03; to amend LIRC 1.01, 1.02 (intro.), (3), (5), (6) and (8), 2.01 (1) (a), (b), (c) and (d), 2.03, 2.04, 3.01 (1) (a), (b) and (c) and 4.01 (1) (a) and (b); to repeal and recreate LIRC 3.02; and to create LIRC 1.02 (1m), (1r), (5m) and (5r), 1.03, 1.07 and 4.02 (2), relating to procedural rules concerning the petition to and handling of cases by the labor and industry review commission.

ANALYSIS PREPARED BY THE LABOR AND INDUSTRY REVIEW COMMISSION

1983 Wisconsin Act 122, section 6, and 1983 Wisconsin Act 27, section 1370, changed the period to petition for commission review in cases under the Wisconsin Fair Employment Act and the fair housing provisions from 20 to 21 days, making appeal periods to LIRC in all programs a uniform 21 days. These rule changes are made to reflect this statutory change, to clarify the dates for petitions and to reflect the fact that, due to the change from 20 to 21 days, due dates will no longer fall on Saturday or Sunday. Statutory renumbering of certain Fair Employment Act provisions by Ch. 334, Laws of 1981, is also incorporated in the rules, and shifting of protective occupation retirement cases under worker's compensation by 1983 Wisconsin Act 191 from s. 66.191, Stats., to 40.65, is accounted for.

Post Office box number changes are noted, and room numbers, which have also changed, are deleted, for mailing addresses for filing petitions for commission review. References to the job service division have been amended to include the unemployment compensation division. (Reorganization of the job service division, effective November 19, 1984, has created a new unemployment compensation division.) Petitions to the commission may be filed at either a job service office or an unemployment compensation office.

The provision for filing briefs is made uniform for all programs and is placed in the general provisions.

A section reflecting commission practice regarding withdrawals of petitions for review is created in the general provisions.

The general provision on transcripts is clarified to reflect a limited situation when use of a transcript for commission review is required by statute. Clarification of procedures regarding transcripts, including references to renumbered statutes, is made in the equal rights section.

Judicial review provisions in unemployment compensation and worker's compensation are clarified by stating commission practice when pleadings to start a judicial review action are received by mail.

The practice regarding answers and set aside orders in worker's compensation cases is stated and clarified. An answer to a petition is currently solicited by a letter acknowledging the petition, but no current statute or rule provides for an answer. Also, the present rule on set aside orders appears to be mandatory, whether or not an answer has already been filed. The rule is proposed to be changed to permit foregoing setting aside for an opportunity to answer if an answer to the petition has been filed.

Pursuant to authority vested in the labor and industry review commission by s. 101.04 (2), Stats., the commission repeals, renumbers, amends, recreates and creates rules interpreting ss. 40.65 (2), 56.07 (7), 56.21 (1), 101.22 (4p), 101.223 (4), 102.18 (2), (3), and (4) (b), 108.09 (6) and (7), 108.10 (2) and (3), and 111.39 (5) (a), Stats., as follows:

SECTION 1. LIRC 1.01 and 1.02 (intro.), (3), (5), (6) and (8) of the Wis. Adm. Code are 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), 56.07 (7), 56.21 (1), ~~66.191~~, 101.22 (4p), 101.223 (4), 102.18 (2), and (3), and (4) (b), 108.09 (6) (a), 108.10 (2) and (3) and ~~111.36~~ 111.39 (5) (a), Stats.

1.02 PETITIONS. All petitions for commission review shall be received within ~~the statutory appeal period provided in each individual program within the commission's jurisdiction~~ 21 days from the date of mailing of the examiner's finding and decision, except as provided under this section. "Received" means physical receipt. A mailed petition post-marked on or prior to the last day of an appeal period but received on a subsequent day is not a timely appeal. All petitions or appeals shall be in writing. The receipt may be on the next succeeding business day if the last day for filing falls on ~~Saturday, Sunday or~~ any of the following:

- (3) ~~the~~ The last Monday in May;
- (5) ~~the~~ The first Monday in September;
- (6) ~~the~~ The fourth Thursday in November;
- (8) ~~the~~ The Monday following if January 1, July 4 or December 25 falls on Sunday.

SECTION 2. LIRC 1.02 (1m), (1r), (5m) and (5r) are created to read:

- (1m) January 15;
- (1r) The third Monday in February;
- (5m) The second Monday in October;
- (5r) November 11;

SECTION 3. LIRC 1.03 of the Wis. Adm. Code is renumbered 1.04 and amended to read:

LIRC 1.04 REVIEW. Review by the commission is on the record of the case including the synopsis or summary of the testimony or other evidence presented at the hearing as prepared by the department of industry, labor and human relations' hearing examiner who presided at the hearing. Consideration of the hearing tapes or a transcript of the hearing testimony is discretionary with the commission, except as provided under s. LIRC 4.02 (2).

SECTION 4. LIRC 1.03 of the Wis. Adm. Code is created to read:

LIRC 1.03 WITHDRAWALS. Requests to withdraw petitions shall be in writing. The commission may deny a request by a party to withdraw his or her 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 proper administration of the program involved. Denials of withdrawals shall be in writing, but may be included in the findings and decision of the commission.

SECTION 5. LIRC 1.04 and 1.05 of the Wis. Adm. Code are renumbered 1.05 and 1.06.

SECTION 6. LIRC 1.07 of the Wis. Adm. Code is created to read:

LIRC 1.07 BRIEFS. Either party may request the commission to establish a briefing schedule. Each party may file with the commission briefs or memoranda within the time limits of the briefing schedule established by the commission. Requests for extensions of time for filing briefs shall be made in writing. Extensions may be approved in writing upon good cause shown. Copies of briefs or memoranda filed with the commission shall be furnished to the opposing party.

SECTION 7. LIRC 2.01 (1) (a), (b), (c) and (d) of the Wis. Adm. Code are amended to read:

LIRC 2.01 PETITIONS. (1) A petition for commission review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be received within 21 days after the date of mailing of the decision to the parties and during regular office hours by an employe of the job service division, or unemployment compensation division, department of industry, labor and human relations, or an employe of the commission, at:

(a) Any job service office, or unemployment compensation office, or

(b) A hearing office of the ~~job-service~~ unemployment compensation division, or

(c) The central administrative office of the department, bureau of legal affairs, ~~job-service~~ unemployment compensation division, 201 East Washington Avenue, P. O. Box ~~7905 8942~~, Madison, Wisconsin ~~53707~~ 53708, or

(d) ~~the~~ The office of the labor and industry review commission, ~~room-453~~, 201 East Washington Avenue, P. O. Box 8126, Madison, Wisconsin 53708.

SECTION 8. LIRC 2.03 and 2.04 of the Wis. Adm. Code are amended to read:

LIRC 2.03 HEARING TAPES. Copies of hearing tapes may be requested and obtained according to s. 108.09 (5), Stats., from the ~~job-service-division~~, department of industry, labor and human relations, bureau of legal affairs, unemployment compensation division, 201 East Washington Avenue, P. O. Box ~~7905 8942~~, Madison, Wisconsin ~~53707~~ 53708.

2.04 TRANSCRIPTS. Copies of transcripts may be requested and obtained according to s. 108.09 (5), Stats., from the labor and industry review commission, ~~room-4537~~ 201 East Washington Avenue, P. O. Box 8126, Madison, Wisconsin 53708. A fee of 50 cents per page or a minimum fee of 10 dollars which shall constitute the advance fee under s. 108.09 (5) (b), Stats., shall be charged. Upon proper showing of financial inability to pay for copies of such testimony or proceedings, the commission may furnish copies of transcripts on such terms as may be agreed upon. Transcripts need not be furnished if the requesting party does not file a timely appeal and the right to further appeal has expired. In such a situation the commission shall refund all or part of the advance payment after taking into account how much of the transcript was completed.

SECTION 9. LIRC 2.05 of the Wis. Adm. Code is repealed.

SECTION 10. LIRC 2.06 of the Wis. Adm. Code is renumbered 2.05 and amended to read:

LIRC 2.05 JUDICIAL REVIEW. Judicial review of any commission decision under 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. Service of the summons and complaint shall be made upon a commissioner or agent authorized by the commission to accept service. Service may be made at ~~room-4537~~ 201 East Washington Avenue, P. O. Box 8126, Madison, Wisconsin 53708. Service made by mail is effective to commence the action only if the summons and complaint are actually received by the commission within the appeal period. The labor and industry review commission and the adverse party shall be made defendants. The adverse party is the one in whose favor the commission's decision was made.

SECTION 11. LIRC 3.01 (1) (a), (b) and (c) of the Wis. Adm. Code are amended to read:

LIRC 3.01 PETITIONS. (1) A petition for commission review of the findings or order of a department of industry, labor and human relations' hearing examiner shall be received within 21 days from the date of mailing of the findings and order to the parties and during regular office hours by an employe of either the worker's compensation division, ~~or~~ job service division or unemployment compensation division of the department at:

(a) The central administrative office of the worker's compensation division, ~~room-1527~~ 201 East Washington Avenue, P. O. Box 7901, Madison, Wisconsin 53707, or

(b) The worker's compensation division, ~~room-3907~~ 819 North Sixth Street, Milwaukee, Wisconsin 53203, or

(c) Any job service office or unemployment compensation office.

SECTION 12. LIRC 3.02 of the Wis. Adm. Code is repealed and recreated to read:

LIRC 3.02 ANSWER AND SET ASIDE. (1) A party opposing the petition may file an answer to a petition for commission review with the worker's compensation division of the department of industry, labor and human relations within 21 days from the opposing party's receipt of a copy of the petition.

(2) If an answer has not been filed under sub. (1), the commission may, prior to its final order or award, set aside the findings and order of the hearing examiner, in which case it shall notify the party opposing the petition who shall have 10 days from the date of notice in which to make an answer.

SECTION 13. LIRC 3.03 of the Wis. Adm. Code is repealed.

SECTION 14. LIRC 3.04, 3.05, 3.06 and 3.07 of the Wis. Adm. Code are renumbered 3.04, 3.04, 3.05 and 3.06 and amended to read:

LIRC 3.03. TRANSCRIPTS. Transcripts of the testimony at hearings conducted by hearing examiners of the worker's compensation division, department of industry, labor and human relations, may be requested and obtained from the worker's compensation division of the department according to s. Ind 80.14, ~~Wis. Adm. Code~~. The commission may direct the preparation of a transcript for the purpose of commission review if a satisfactory showing is made by any party that the synopsis of testimony prepared by the hearing examiner of the department of industry, labor and human relations is not sufficiently complete and accurate to reflect the relevant and material testimony and other evidence taken.

LIRC 3.04 OTHER PETITIONS. The provisions of s. 102.18, Stats., shall apply to all petitions to the commission under ss. 40.65 (2), 56.07 (7), and 56.21, ~~and 66.191~~, Stats.

LIRC 3.05 COMPROMISE SETTLEMENTS. Compromise settlements of worker's compensation claims are solely within the jurisdiction of the worker's compensation division, department of industry, labor and human relations, according to s. 102.16, Stats., and s. Ind 80.03, ~~Wis. Adm. Code~~.

LIRC 3.06 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 or s. 801.02, Stats. Service of the summons and complaint shall be made upon a commissioner or agent authorized by the commission to accept service. Service may be made at ~~room 4537~~, 201 East Washington Avenue, P. O. Box 8126, Madison, Wisconsin 53708. Service made by mail is effective to commence the action only if the summons and complaint are actually received by the commission within the appeal period. The labor and industry review commission and the adverse party shall be made defendants. The adverse party is the one in whose favor the commission's order or award was made.

SECTION 15. LIRC 4.01 (1) (a) and (b) of the Wis. Adm. Code are amended to read:

LIRC 4.01 PETITIONS. (1) A petition for commission review of the findings and order of a department of industry, labor and human relations' hearing examiner shall be received within ~~20~~ 21 days from the date of mailing of the findings and order to the parties and during regular office hours by an employe of the equal rights division of the department at:

(a) The equal rights division, ~~room-2307~~ 819 North Sixth Street, Milwaukee, Wisconsin 53203, or

(b) The central administrative office of the equal rights division, ~~room-4027~~ 201 East Washington Avenue, P. O. Box ~~7946~~ 8928, Madison, Wisconsin ~~53707~~ 53708.

SECTION 16. LIRC 4.02 of the Wis. Adm. Code is repealed.

SECTION 17. LIRC 4.03 of the Wis. Adm. Code is renumbered 4.02 (1) and amended as follows:

LIRC 4.02 TRANSCRIPTS. (1) Transcripts of the testimony at hearings before department hearing examiners may be obtained according to s. Ind ~~88.075, Wis. Adm. Code~~ 88.17, or, in fair housing, s. Ind 89.13.

SECTION 18. LIRC 4.02 (2) of the Wis. Adm. Code is created to read:

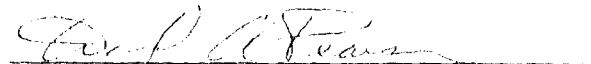
LIRC 4.02 (2) Review by the commission shall be based on the record of the case, including a transcript of the testimony, where the record has been transcribed before the examiner prepared his or her decision, and where the transcript has been substituted for the summary of proceedings under s. Ind 88.18 (1).

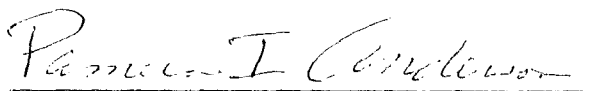
SECTION 19. LIRC 4.04 and 4.05 of the Wis. Adm. Code are renumbered 4.03 and 4.04.

The rules contained in this order shall take effect, as provided in s. 227.026 (1) (intro.), Stats., on the first day of the month following publication in the Wisconsin Administrative Register.

Dated: December 20, 1984

LABOR AND INDUSTRY REVIEW COMMISSION

  
David A. Pearson, Chairman

  
Pamela I. Anderson, Commissioner

  
Hugh C. Henderson, Commissioner



State of Wisconsin \

LABOR AND INDUSTRY REVIEW COMMISSION

November 20, 1984

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(608) 266-9850

Gary Poulson  
Assistant Revisor  
Revisor of Statutes Bureau  
411 West, Capitol  
Madison, Wisconsin

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Revisor of Statutes  
Bureau

Dear Mr. Poulson:

Enclosed is a copy of the revised administrative rules of the Labor and Industry Review Commission which has been forwarded today to the Secretary of State.

Please note that several technical amendments have been made since approval by the legislative committees, but prior to promulgation. Effective November 19, 1984, the former Job Service Division of the Department of Industry, Labor and Human Relations was divided into two separate divisions, the Unemployment Compensation Division and the Job Service Division. In ss. 2.01(1)(a), (b), (c); 2.03; and 3.01(1)(c), references to the Job Service Division have been amended to clarify that petitions for review may be filed with either the Job Service Division or the Unemployment Compensation Division. S. 3.05 has also been amended as well as renumbered in order to remove a reference to the now repealed s. 66.191, Stats. This had been inadvertently overlooked in the original submission to the Rules Clearinghouse.

Sincerely,

James L. Pflasterer  
General Counsel

Enc.