

STATEMENT OF SCOPE

Department of Administration

Rule No.: DHA 4

Relating to: Procedural rules for hearings in worker's compensation cases and similar cases

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not applicable

2. Detailed description of the objective of the proposed rule:

2015 Wisconsin Act 55 (Act 55) transferred the adjudication of disputed worker's compensation claims and related claims from the Division of Worker's Compensation in the Department of Workforce Development (DWD) to the Division of Hearings and Appeals (DHA) in the Department of Administration, and provided for the transfer of rules primarily related to those adjudicatory functions of DWD to DHA. The proposed rule makes minor and technical changes to the transferred rules, and creates a limited number of new procedural provisions required due to the transfer of the adjudicatory functions to DHA. The proposed rule also will include a rule describing DHA's mediation process in worker's compensation cases.

The proposed rule relates to hearings in worker's compensation and related cases over which DHA now has jurisdiction, including:

Worker's compensation cases under Wis. Stat. ch. 102.

Duty disability cases under Wis. Stat. § 40.65(2).

Applications for duty disability benefits for a mental injury under a retirement system of a county having a population of 500,000 or more under Wis. Stat. § 59.88 (3).

Applications for duty disability benefits for a mental injury under a retirement system of a 1st class city under Wis. Stat. § 62.624 (2).

Hearings on supplemental awards in cases of injury or death of a state or local government officer or employee which arose out of the performance of duties in connection with a public insurrection under Wis. Stat. § 106.25.

Hearings involving certain permanently disabling injuries sustained by an inmate of a reforestation camp, in the performance of work in connection with the maintenance of the camp under Wis. Stat. § 303.07 (7).

Hearings involving certain permanently disabling injuries sustained by an inmate of a state institutions, in the performance of assigned work is injured, under Wis. Stat. § 303.21.

Hearings involving special death and disability benefits for certain public employees under § 66.191, 1981 Wis. Stats.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Act 55 transferred the adjudication of disputed worker's compensation claims and related claims from DWD to DHA. The policy underlying those procedural rules is the efficient administration of hearings in worker's compensation hearings while ensuring due process to all parties to those hearings. The proposed rule does not change the existing policies relevant to the rule.

The policy alternative is to do nothing. If DHA does not move forward with the proposed rule, there is a potential for ambiguity regarding the application of certain procedural rules retained by DWD--which relate to the transferred adjudicatory functions but may not relate *primarily* to those functions---in cases heard by DHA. There would be no formal rule describing DHA's mediation process in worker's compensation cases.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. § 102.01(2)(ar)

"(2) In this chapter: ... (ar) 'Division' means the division of hearings and appeals in the department of administration. "

Wis. Stat. § 102.15.

"(1) Subject to this chapter, the division [DHA] may adopt its own rules of procedure and may change the same from time to time.

"(2) The division [DHA] may provide by rule the conditions under which transcripts of testimony and proceedings shall be furnished."

Wis. Stat. § 102.17 (1) (d) 3.

"The division [DHA] may, by rule, establish the qualifications of and the form used for certified reports submitted by experts who provide information concerning loss of earning capacity under s. 102.44 (2) and (3)..."

also:

Wis. Stat. § 15.03

"Any division ... attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, ... so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division ..."

Wis. Stat. § 227.11 (2) (b)

"(2) Rule-making authority is expressly conferred on an agency as follows: ... (b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure."

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The estimated amount of time that state employees will spend developing the rule is 200 hours.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will affect parties to worker's compensation and related hearings, including employees, employers, insurers, self-insured employers, and attorneys and other persons representing those parties at hearing. The entities affected may include all of the following:

State Bar of Wisconsin
Wisconsin Manufacturers and Commerce
Worker's Compensation Advisory Council

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

No existing or proposed federal regulations relate to the proposed rule.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have little or no economic impact locally or state-wide. The proposed rule is procedural in nature and will have no economic impact on small business.

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Date Submitted