Chapter ILHR 140

UNEMPLOYMENT COMPENSATION APPEALS

Note: Chapter Ind-UC 140 as it existed on November 30, 1985 was repealed and a new chapter ILHR 140 was created effective December 1, 1985.

ILHR 140.001 Definitions. In this chapter, unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Administrative law judge" means the appeal tribunal appointed to conduct hearings arising under ch. 108, Stats.

(2) "Commission" means the labor and industry review commission.

(3) "Department" means the department of industry, labor and human relations.

(4) "Division" means the unemployment compensation division of the department of industry, labor and human relations.

(5) "Hearing office" means an office of the unemployment compensation division of the department of industry, labor and human relations which is responsible for the scheduling and conducting of hearings arising under ch. 108, Stats.

(6) "Local office" means an office of the unemployment compensation division of the department of industry, labor and human relations which is responsible for the processing and adjudication of unemployment compensation claims.

(7) "Representative" means any attorney or agent authorized to represent any party of which the department has notice.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; r. and recr. (7), r. (8), Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 140.01 Appeal time limits in determinations and decisions. Each initial determination issued under s. 108.09 or 108.10, Stats., shall specify the time limit within which any request for hearing is required to be received by the department under ch. 108, Stats. Each administrative law judge decision mailed to a party shall specify the time limit within which any petition for commission review is required to be received by the department or the commission under ch. 108, Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.02 Request for hearing. (1) A request for hearing as to any matter in an initial determination issued under s. 108.09 or 108.10, Stats., shall be submitted to the department. The request shall be in writing and signed by the appellant or its attorney or agent.

(2) A request for hearing is timely filed if physically received within the statutory appeal period specified under s. 108.09 or 108.10, Stats., and during regular state office hours by an employe of the division at:

(a) A local office;

(b) A hearing office; or

(c) The central administrative office of the bureau of legal affairs, unemployment compensation division, department of industry, labor and human relations, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708.

(3) A request for hearing sent by mail and postmarked on or prior to the last day of an appeal period but received by the department on a subsequent day is not a timely request for hearing. The receipt may be on the next business day if the last day for filing falls on Saturday, Sunday, or any of the following:

(a) January 1;

(b) The third Monday in January;

(c) The third Monday in February;

(d) Good Friday;

(e) The last Monday in May;

(f) July 4;

(g) The first Monday in September;

(h) The second Monday in October;

(i) November 11;

(j) The fourth Thursday in November;

(k) December 24;

(l) December 25;

(m) December 31;

(n) The Monday following if January 1, July 4 or December 25 falls on Sunday; and

(o) Any other day on which mail is not delivered by the postal authorities.

(4) A request for hearing by an interstate claimant is timely filed if physically received within the statutory appeal period at one of the offices specified under sub. (2), or at a public employment office in the agent state.

(5) If a party first receives an initial determination after the statutory appeal period has expired and through no fault of that party, any request for hearing by that party is timely filed only if physically received by the department within 14 days after the party received the initial determination.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (3) (intro.), (b) and (n), Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.03 Notice of pending appeal. After a request for hearing is received, the department shall promptly notify the appellant and respondent in writing of the request receipt. The notice may also contain any information concerning the hearing which the department considers relevant.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.04 Failure to timely file request for hearing. (1) The administrative law judge shall dismiss any request for hearing which has not been timely filed unless the party filing the request establishes probable good cause that the reason for having failed to timely file the request for hearing was beyond the party's control. If the request for hearing does not contain a statement as to why the request was not timely filed, the hearing office shall mail a letter to that party requesting a written explanation as to why the request for hearing was not timely filed. The administrative law judge shall dismiss the request for hearing if the party does not respond in writing to the letter within 7 days after mailing or if the party's explanation does not establish probable good cause for failing to timely file the request for hearing.

(2) If the administrative law judge decides that probable good cause exists, the hearing office may schedule a hearing on the question of whether the party's failure to timely file the request for hearing was for a reason beyond the party's control. The hearing office may also schedule a hearing, provisionally, on the merits of the case at the same time as the hearing on the party's failure to timely file the request.

(3) If, after a hearing, the administrative law judge decides that a party failed to timely file the request for hearing for a reason beyond that party's control, the hearing office shall schedule a hearing on the merits of the case if a provisional hearing on the merits has not been held.

(4) An administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the party's failure to timely file the request for hearing was for a reason beyond the party's control. If the administrative law judge decides this question in favor of the appellant, an administrative law judge shall then make ultimate findings and conclusions on the merits of the case.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (3), Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.05 Withdrawal of request for hearing. (1) An appellant may withdraw its request for hearing at any time before the issuance of a decision on the merits by notifying the hearing office. The administrative law judge shall issue a withdrawal decision after a withdrawal notice is received from the appellant.

(2) An appellant may submit a request to retract its withdrawal and reinstate its request for hearing. The retraction request shall be in writing and include a statement of the reason for the request. The administrative law judge may not consider a request to retract a withdrawal unless the request establishes good cause for the retraction and is received within 21 days after the withdrawal decision was mailed to the appellant.

(3) If the hearing office receives the retraction request prior to issuance of a withdrawal decision and the request establishes good cause for the retraction, the administrative law judge shall acknowledge the request by letter to the appellant. If a timely retraction request is received by the hearing office after issuance of the withdrawal decision and the request establishes good cause for the retraction, the administrative law judge shall issue a decision setting aside the withdrawal decision and the hearing office shall schedule another hearing. The administrative law judge may only issue a decision setting aside the withdrawal decision within 21 days after the withdrawal decision was mailed to the parties.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.06 Notice of hearing; contents; to whom sent; issues not on notice of hearing; consolidation of issues. (1) The department shall schedule a hearing at the earliest feasible time after the request for hearing is received. The hearing office shall mail a notice of hearing to each party.

(2) The notice of hearing shall state the time and place of the hearing, the department's statutory authority for convening the hearing and the issues to be heard. The hearing office shall mail the notice of hearing to the last-known address of each party not less than 5 days in advance of the hearing, excluding the day of mailing and the day of the hearing, unless all parties waive the notice requirement.

(3) The administrative law judge may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified at the hearing and does not object.

(4) The hearing office may consolidate for hearing or decision, or both, issues involving the same parties. To avoid needless multiplicity of hearings and decisions, the hearing office may consolidate for hearing or decision, or both, issues involving more than one appellant or more than one respondent, or both, and arising out of the same or similar circumstances.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.07 Postponement of hearings. (1) A party who requests a postponement of a hearing shall make the request known to the hearing office as soon as the party becomes aware that a postponement is necessary. Unreasonable delay by the party requesting postponement may be the basis for a denial of the request.

(2) No postponements may be granted for the mere convenience of a party. Parties are expected to arrange time off from their everyday affairs, including work and school, to attend hearings. The hearing office or administrative law judge scheduled to conduct the hearing may grant postponements only for exceptional reasons. An exceptional reason may include circumstances such as the following:

(a) Serious illness of a party or necessary witness which makes appearance inadvisable;

(b) Death of an immediate family member of a party or necessary witness;

(c) Inclement weather conditions on the day of the hearing which make it hazardous for a party or a necessary witness to travel to the hearing location;

(d) Transportation difficulties arising suddenly which prevent a party or necessary witness from traveling to the hearing location;

(e) An out-of-town business meeting of a necessary witness which was scheduled prior to receipt of the hearing notice and which cannot be re-scheduled;

(f) Commitment of an attorney or agent which was scheduled prior to his or her being retained and which cannot be re-scheduled, if the party contacted the attorney or agent within a reasonable time after receipt of the hearing notice; or

(g) A scheduling problem or other unavoidable delay on the day of the hearing which prevents the administrative law judge from completing the hearing as scheduled.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.08 Maintenance of hearing files; limited discovery; inspection of records. (1) PRE-HEARING STAGE. (a) The hearing office shall compile a hearing file for every case in which a request for hearing has been received which shall contain the papers, documents and departmental records relating to the issue of the hearing. Prior to the scheduled date of the hearing, a party to a hearing may inspect the hearing file and procure copies of file contents during regular hearing office hours at the hearing office or other convenient location as determined by the hearing office. If requested, the hearing office may mail copies of file contents to a party. The department may allow such inspection or release of file contents to a party's representative, union agent or legislator only if that individual indicates by a written or verbal statement that the individual has authorization from the party.

(b) Unless the administrative law judge orders otherwise, the sole means of discovery available to a party or representative prior to a hearing is inspection of the hearing file and procurement of copies of file contents. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09 and 108.10, Stats.

(c) The administrative law judge may deny a request to inspect the hearing file or procure copies of file contents on the day of the hearing if such inspection or procurement would delay or otherwise interfere with the hearing.

(2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any party or representative except that the administrative law judge may conduct a closed inspection of evidence and exhibits if the interests of justice so require. The judge may sequester from the hearing room any person, party or representative as part of the closed inspection. The judge may also issue a protective order to prohibit the parties and their representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

(3) POST HEARING STAGE. After the hearing is concluded, a party or representative may inspect any hearing file contents that the party or representative may inspect under subs. (1) and (2), including the hearing tapes, written synopsis of testimony, and any transcript which is prepared at the department's direction. Any person who is not a party or representative at the hearing may only inspect the following:

(a) The initial determination.

(b) The exhibits submitted and marked as exhibits at the hearing, whether or not received by the administrative law judge.

(c) The appeal tribunal decision issued for the hearing.

(d) The hearing tapes.

(e) The written synopsis of testimony.

(f) The transcript of the testimony, if one is prepared at the department's direction.

(4) CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING. (a) Notwithstanding subs. (1) to (3), neither an employing unit which is a party to a hearing nor its representative may inspect the worker's unemployment compensation record as that record relates to work for another employing unit unless an administrative law judge approves a request.

(b) Notwithstanding subs. (1) to (3), no party, representative or other person may inspect the following:

1. The investigation report containing the summation of interviews and the rational used by the department in issuing the initial determination.

2. Department memoranda concering unemployment tax litigation strategy.

3. The investigation reports of department auditors concering the status and liability of employing units under ch. 108, Stats.

4. Evidence and exhibits examined by the administrative law judge in a closed inspection under sub. (2).

5. Evidence and exhibits declared confidential under a protective order issued by the administrative law judge.

6. The handwritten notes made by the administrative law judge at the hearing.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; r. and recr. Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 140.09 Subpoenas; issuance and service; modification. (1) Only a department deputy or an administrative law judge may issue a subpoena to compel the attendance of any witness or the production of any books, papers, documents or other tangible things designated in the subpoena. Attorneys may not issue their own subpoenas. The party who desires a subpoena shall make the request known to the department as soon as possible. Subpoenas shall be issued on forms supplied by the department and may not be issued in blank.

(2) Subpoenas shall only be issued when necessary to ensure fair adjudication of the issue or issues of the hearing. The department deputy or administrative law judge may refuse to issue any subpoena if:

(a) The testimony sought is not relevant or material;

(b) The testimony sought is hearsay;

(c) The testimony sought is unduly cumulative or repetitive of other testimony to be presented by the party; or

(d) The records requested disclose business secrets.

(3) A party whose request for a subpoena has been denied by a department deputy or a hearing office may at the hearing request the administrative law judge who conducts the hearing to issue the subpoena. If the administrative law judge grants the request for a subpoena, the judge may adjourn the hearing to allow sufficient time for service of and compliance with the subpoena.

(4) The administrative law judge who is scheduled to conduct a hearing for which a subpoena has been issued may quash or modify the subpoena if the judge determines that the witness or tangible things subpoenaed are not necessary to a fair adjudication of the issues of the hearing or that the subpoena has not been served in the proper manner.

(5) The party to whom a subpoena is issued shall serve the subpoena as provided under ch. 885, Stats., and pay the witness fee and travel expenses specified under s. ILHR 140.20 to the subpoenaed witness at or before the time of service.

(6) The department may subpoena a witness for a party if the party is unable to prepay the witness fees and travel expenses. The department shall pay a witness as provided under s. ILHR 140.20.

(7) If any witness fails to comply with a subpoena issued under this section, the department may petition a judge or court commissioner for a writ of attachment under s. 885.12, Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (1), renum. (6) to be (7), cr. (6), Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.10 Hearing procedure; order of witnesses; public hearing and exclusion of certain persons; oral decisions. (1) All testimony shall be given under oath or affirmation. The administrative law judge shall administer the oath or affirmation to each witness. No person who refuses to swear or affirm the veracity of his or her testimony may testify. Each party shall be given an opportunity to examine and cross-examine witnesses. However, the administrative law judge may limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily and unduly burden the record.

(2) The administrative law judge has the responsibility to develop the facts and may call and examine any witness that he or she deems necessary and may also determine the order in which witnesses are called and the order of examination of each witness. The administrative law judge

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