

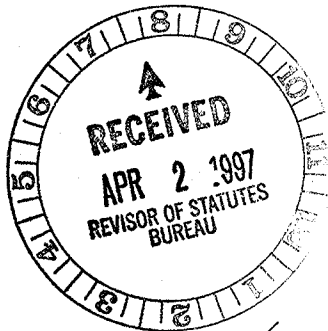
Clearinghouse Rule 96-136

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

I, Pamela I. Anderson, Chairman of the Labor and Industry Review Commission and custodian of the official records, do hereby certify that the annexed rules, relating to procedural rules concerning the petition to and handling of cases by the Labor and Industry Review Commission, were duly approved and adopted by this Commission on March 25, 1997. I further certify that this copy has been compared by me with the original on file with this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Labor and Industry Review Commission at 3319 West Beltline Highway, in the city of Madison, this 1st of April, 1997.

Pamela I. Anderson



6-1-97

ORDER OF  
THE LABOR AND INDUSTRY REVIEW COMMISSION

To repeal LIRC 3.02; to renumber LIRC 3.06; to renumber and amend LIRC 3.03, 3.04 and 3.05; to amend LIRC 1.01, 1.02, 1.07, 2.03, 2.04, LIRC 3 (title), 3.01, LIRC 4 (title), 4.01, and 4.02; to repeal and recreate LIRC 1.04, 1.05, 1.06, 2.01, 4.03 and 4.04; and to create LIRC 1.025, 1.026, 1.027, 1.045 and 2.015, relating to procedural rules concerning petition to and handling of cases by the labor and industry review commission.

ANALYSIS PREPARED BY THE LABOR AND INDUSTRY REVIEW COMMISSION

The commission's statutory jurisdiction was affected by the renumbering of ss. 56.07(7) and 56.21 to 303.07(7) and 303.21 in 1989 Wisconsin Act 31, and by the removal of housing discrimination administrative cases from commission review in 1991 Wisconsin Act 295. 1995 Wisconsin Act 27 renumbered s. 101.22 as to public accommodations as s. 106.04 and s. 101.223 as to post secondary education as s. 106.07. The general rule setting forth the agency's jurisdiction is updated accordingly. Commission authority to review worker's compensation and unemployment compensation cases has been brought more in line with rulemaking guidelines by replacing references to the applicable subsections with section references.

The Unemployment Compensation Division has been renamed the Division of Unemployment Insurance; the Department of Industry, Labor and Human Relations has been renamed the Department of Workforce Development as of July 1, 1996, and the commission is moving in September 1996. The rules are updated to reflect such changes. (References in the rules to the program remain as "unemployment compensation" because, although the name of the Division has changed to "Division of Unemployment Insurance," the statutes, including the title to Chapter 108, retain the term "unemployment compensation.")

1989 Wisconsin Act 77 added postmarking to actual receipt as an acceptable method for filing unemployment compensation appeals. The rules are updated to reflect those changes and to provide guidance on commission policies regarding issues that arise in connection with postmarked appeals. Telephone claimstaking for unemployment compensation has led to the closing of local unemployment offices and the consequent absence of those offices as locations for filing appeals. Local unemployment offices are deleted from the list of places for filing petitions for commission review.

Good Friday has been deleted from the list of days as to which the last day for appeal may be extended because state offices

must now be open all day on Good Friday. A catch-all provision for extending the appeal date when mail is not delivered by the postal service was added to account for infrequent occasions when for reasons of weather or other unforeseen circumstances, the mail is not delivered.

A rule permitting filing petitions for commission review by facsimile transmission is created to reflect commission practice of accepting such appeals, as well as to provide that the date of transmission of the petition recorded by the facsimile machine will be the date of the petition.

An additional rule subsection has been added to permit filing petitions for commission review in worker's compensation at the Appleton office of the Worker's Compensation Division.

A provision is created clarifying that cross petitions are subject to the same requirements as petitions for review.

The provision regarding answers in worker's compensation is moved to the general provisions to reflect commission practice of accepting answers to petitions in all its program areas.

Outdated references to equal rights division rules are eliminated and the procedures of using transcripts for commission review are clarified and generalized as to all program areas.

A provision is created to specify a fee for photocopying synopses of testimony for parties who request copies and to refer to the fee charged by the department's bureau of legal affairs for cassette recordings of unemployment hearings. The fee for providing transcripts in unemployment cases is increased to be more in line with actual costs.

The rule on filing briefs with the commission is altered to clarify the times at which requests to file briefs will be honored.

The position of the apostrophe in the term "worker's compensation" is altered in the rules to comport with the statutes.

A rule to reflect commission practice handling worker's compensation compromise agreements is created for information and clarification.

A rule is created to summarize judicial review procedures for the equal rights program, to parallel similar commission rules for unemployment compensation and worker's compensation.

#### Regulatory Flexibility Analysis

These proposed rule changes have no effect on small businesses.

SECTION 1. LIRC 1.01 and 1.02 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), ~~101.22 (4p)~~, ~~101.223 (4)~~, 102.18 (2), (3), and (4)(b), 106.04 (10), 106.07 (4), 108.09 (6)(a), 108.10 (2) and (3), and 111.39 (5)(a), 303.07 (7) and 303.21, Stats.

LIRC 1.02 PETITIONS FOR COMMISSION REVIEW. All petitions for commission review shall be received, or, in unemployment compensation, received or postmarked, within 21 days from the date of mailing of the administrative law judge's findings and decision or order, except as provided under this section. "Received" means physical receipt. A mailed petition postmarked on or prior to the last day of an appeal period, but received on a subsequent day is not a timely appeal, except in unemployment compensation. All petitions ~~or appeals~~ shall be in writing. The receipt may last day of an appeal period shall be on the next succeeding business day if the last day for filing falls on any of the following:

- (1) January 1~~+~~.
- (1m) The third Monday in January~~+~~.
- (1r) The third Monday in February~~+~~.
- ~~(2) Good Friday~~+~~~~
- (3) The last Monday in May~~+~~.
- (4) July 4~~+~~.
- (5) The first Monday in September~~+~~.
- (5m) The second Monday in October~~+~~.
- (5r) November 11~~+~~.
- (6) The fourth Thursday in November~~+~~.
- (7) December 24, 25 or 31~~+~~.
- (8) The Monday following if January 1, July 4 or December 25 falls on Sunday.
- (9) Any other day on which mail is not delivered by the postal authorities.

SECTION 2. LIRC 1.025, 1.026 and 1.027 are created to read:

LIRC 1.025 (title) FAXED PETITIONS. Petitions for review may be filed by facsimile transmission. The date of transmission recorded by the facsimile machine shall constitute the date of filing the petition.

LIRC 1.026 (title) CROSS-PETITIONS. Any party may file a petition for review, whether or not any other party has already filed a petition for review. The filing of a petition for review by one party does not extend the time within which any other party may file a petition for review. All petitions for review, including cross-petitions, are subject to the requirements of s. LIRC 1.02 concerning timeliness.

LIRC 1.027 (title) 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. A party filing an answer with the commission shall furnish a copy to the opposing party.

SECTION 3. LIRC 1.04 is repealed and recreated 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 workforce development, by the commission, or by an outside contractor, from a tape recording of the hearing or from notes taken at the hearing by the administrative law judge. The commission may also consider the hearing tapes or a transcript of the hearing testimony. Review shall be based on the transcript if a transcript was prepared prior to issuance of the administrative law judge's decision and the administrative law judge used the transcript in arriving at the decision, or if a party shows to the commission that a synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken.

SECTION 4. LIRC 1.045 is created to read:

LIRC 1.045 (title) OBTAINING COPY OF RECORD. A party in a case before the commission may request the commission to provide a copy of the synopsis of the testimony or other file materials. The commission shall furnish the materials upon request but may charge a fee for photocopying of 20 cents per page. Upon proper showing of financial inability to pay for photocopying, the commission may waive the fee.

SECTION 5. LIRC 1.05 and 1.06 are repealed and recreated to read:

LIRC 1.05 HEARINGS. 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 to take additional evidence on behalf of the commission.

Note: The commission does not conduct hearings as part of its review.

LIRC 1.06 ORAL ARGUMENT. The commission may grant a written request for oral argument if it determines that an issue would be more clearly presented by oral argument.

Note: The Commission does not consider oral argument to be necessary because review is on the basis of the record, the parties have the right to file briefs, and oral argument delays disposition of the petition.

SECTION 6. LIRC 1.07 is amended to read:

LIRC 1.07 BRIEFS. Either party may request the commission to establish a briefing schedule. Requests to file briefs may be made in the petition for review, in an answer, or in writing after the petition and answer. The commission may deny a request to file a brief which is not made in a petition or answer if the commission has already reviewed the case but not yet issued its decision at the time the request is made. 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. A party filing a brief or memorandum with the commission shall furnish a copy to the opposing party.

SECTION 7. LIRC 2.01 is repealed and recreated to read:

LIRC 2.01 PETITIONS FOR COMMISSION REVIEW. (1) A petition for commission review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be postmarked or received within 21 days after the date of mailing of the decision to the parties.

(2) Petitions shall be filed as follows:

(a) With the division of unemployment insurance, department of workforce development, or the commission, at:

1. A hearing office of the division of unemployment insurance; or

2. The central administrative office of the department, bureau of legal affairs, division of unemployment insurance, P.O. Box 8942, Madison, Wisconsin 53708; or

3. Any unemployment insurance division office; or

4. The office of the labor and industry review commission, 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.

(b) In the case of an interstate claimant at one of the locations in par. (a) or with a qualified employe of the agent state in which the interstate claimant files claim.

(c) In the case of a petition by the department, only at the office of the commission.

SECTION 8. LIRC 2.015 is created to read:

LIRC 2.015 TIMELINESS OF PETITIONS. For purposes of section 108.09 (6) (a), Stats., "received or postmarked" means:

(1) If the petition is personally delivered, when the department or the commission physically receives the petition.

(2) If the petition is mailed and bears only a United States postal service postmark, on the date of that postmark.

(3) If the petition is mailed and bears both a United States postal service postmark and a private meter mark, on the date of the United States postal service postmark.

(4) If the petition is mailed and bears only a private meter mark, on the date of that mark.

(5) If the petition is mailed and bears no mark, or bears an illegible mark, 2 business days prior to the date the petition was physically received by the department or the commission.

(6) If the petition is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, on the date of that delivery service mark.

(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, 2 business days prior to the date the petition was physically received by the department or the commission.

SECTION 9. LIRC 2.03 and 2.04 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 department of ~~industry, labor and human relations, workforce development,~~ bureau of legal affairs, ~~unemployment compensation division of unemployment insurance,~~ 201 East Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708. The fee is set forth in s. ILHR 140.21(2).

LIRC 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, ~~201 East Washington Avenue,~~ 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708. A fee of ~~50¢~~ \$1.00 per page, or a minimum fee of ~~\$10~~ \$25 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 shall be furnished after payment of the fee, except that a transcript need not be furnished if the requesting party does not file a timely appeal to court from the commission's decision 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 10. Chapter LIRC 3 (title) and 3.01 amended to read:

CHAPTER LIRC 3 (title)  
~~WORKERS'~~ WORKER'S COMPENSATION

LIRC 3.01 PETITIONS FOR COMMISSION REVIEW. ~~(1)~~ A petition for commission review of the findings or order of a department of ~~industry, labor and human relations'~~ workforce development administrative law judge under s. 102.18, Stats., 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 ~~employee of either the workers'~~ worker's compensation division, or unemployment compensation division of the department the commission at:

~~(a)~~ (1) The central administrative office of the ~~workers'~~ worker's compensation division, 201 East Washington Avenue, P.O. Box 7901, Madison, Wisconsin 53707, or

~~(b)~~ (2) The ~~workers's~~ worker's compensation division, 819 North Sixth Street, Milwaukee, Wisconsin 53203, or

~~(c)~~ Any unemployment compensation office ~~(3)~~ The worker's compensation division, Associated Bank Building, 1500 North Casaloma Drive, Suite 310, Appleton, Wisconsin 54915, or

(4) The office of the labor and industry review commission, 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708.

SECTION 11. LIRC 3.02 is repealed.

SECTION 12. LIRC 3.03, 3.04 and 3.05 are renumbered 3.02, 3.03 and 3.04 and amended to read:

LIRC 3.02 TRANSCRIPTS. Transcripts of testimony at hearings conducted by administrative law judges of the ~~workers'~~ worker's compensation division, department of industry, labor and human relations workforce development, may be requested and obtained from the ~~workers'~~ worker's compensation division of the department, according to s. Ind 80.14 s. DWD 80.14, after the commencement of an action to review an order of the commission in circuit court. 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 ~~administrative law judge of the department of industry, labor and human relations~~ worker's compensation division is not sufficiently complete and accurate to reflect the relevant and material testimony and other evidence taken.



LIRC 3.03 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~~ 303.07 (7) and 303.21, Stats.

LIRC 3.04 COMPROMISE SETTLEMENTS. Compromise settlements of workers' worker's compensation claims are solely within the jurisdiction of the workers' worker's compensation division, department of industry, labor and human relations workforce development, according to s. 102.16, Stats., and s. Ind 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 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 department for consideration of the compromise.

SECTION 13. Chapter LIRC 3.06 is renumbered LIRC 3.05.

SECTION 14. Chapter LIRC 4 (title), LIRC 4.01 and 4.02 are amended to read:

CHAPTER LIRC 4 (title)

EQUAL RIGHTS AND FAIR HOUSING PUBLIC ACCOMMODATION

LIRC 4.01 PETITIONS FOR COMMISSION REVIEW. ~~(1)~~ A petition for commission review of the findings and order of a department of ~~industry, labor and human relations workforce development~~ administrative law judge under s. 111.39 (5) or 106.04, Stats., 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 the~~ equal rights division of the department at:

~~(a)~~ (1) The equal rights division, 819 North Sixth Street, Milwaukee, Wisconsin 53203, or

~~(b)~~ (2) The central administrative office of the equal rights division, 201 East Washington Avenue, P.O. Box 8928, Madison, Wisconsin 53708.

LIRC 4.02 TRANSCRIPTS. (1) Transcripts of the testimony at hearings before department administrative law judges may be obtained according to ~~s. Ind 88.17, or, in fair housing, s. Ind 89.21~~ s. ILHR 218.19, or, in public accommodation, s. ILHR 221.20.

(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 administrative law judge prepared a decision, under s. Ind 88.18 (5)~~ and used by the administrative

law judge in preparing a decision, or where a party has obtained a transcript under sub. (1) and provides it to the commission and the opposing party.

SECTION 15. LIRC 4.03 and 4.04 are repealed and recreated to read:

LIRC 4.03 REHEARINGS. The provisions of s. 227.49, Stats., with respect to rehearings shall not apply to decisions of the commission, as the commission does not conduct hearings, and commission review under s. 111.39 (5)(b), Stats., is itself an alternative to the rehearing procedure.

LIRC 4.04 ACTIONS FOR JUDICIAL REVIEW. (1) FAIR EMPLOYMENT. Judicial review of any commission order or decision in fair employment cases under s. 111.39 (5), Stats., shall be commenced in the manner and upon the grounds specified in ss. 227.52 and 227.53, Stats. Any person aggrieved by a final decision of the commission shall be entitled to judicial review in circuit court. Proceedings for review shall be instituted within 30 days from the date of the decision. Such proceedings are instituted by serving a petition for review, either personally or by certified mail, upon the labor and industry review commission in Madison, and, by filing such petition with the clerk of the circuit court for the county where the judicial review proceedings are to be held. Copies of the petition shall be served upon all parties who appeared before the commission in the case not later than 30 days after commencing the proceeding for review. The copies shall be served personally, by certified mail, or when service is timely admitted in writing, by first class mail. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds upon which review is sought. The petition shall be entitled in the name of the person serving it as petitioner and the commission as respondent. The proceedings shall be in the circuit court of the county where the petitioner resides. If the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane county.

(2) PUBLIC ACCOMMODATION. Judicial review of any commission order or decision in public accommodation cases under s. 106.04 (10)(b), Stats., shall be commenced as set forth in s. 106.04 (10)(c), Stats. Within 30 days after service upon all parties of an order of the commission, the respondent or complainant may appeal the order to the circuit court for the county in which the alleged prohibited act took place by the filing of a petition for review. The respondent or complainant shall receive a new trial on all issues relating to alleged discrimination and a further right to a trial by jury, if so desired. The department of justice shall represent the commission. In any such trial the burden shall be to prove an act prohibited under sub. 106.04 (9), Stats., by a fair preponderance of the evidence. Costs in an amount not to exceed \$100 plus actual disbursements for the

attendance of witnesses may be taxed to the prevailing party on the appeal.

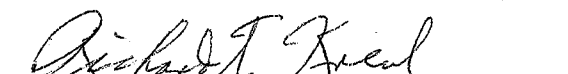
This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro), Stats.

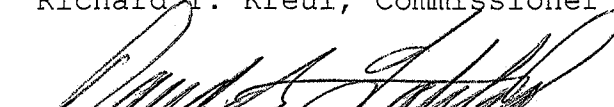
Dated

LABOR & INDUSTRY REVIEW COMMISSION

March 25, 1997

  
Pamela I. Anderson, Chairman

  
Richard T. Kreul, Commissioner

  
David B. Falstad, Commissioner