

Proposed Rule-Making Order
Wisconsin Labor and Industry Review Commission

The Wisconsin Labor and Industry Review Commission proposes an order to amend LIRC 1.025(3), 1.025(4), 2.05, 3.05 and 4.04, relating to the rules of practice and procedure before the commission.

Rule Summary

Statutes Interpreted - Wis. Stat. secs. 40.65(2), 102.18(3) and (4), 106.52(4), 106.56(4), 108.09(6), 108.10(2) and (3), 111.39(5)(a), 303.07(7) and 303.21, allow parties to file petitions for commission review and describe the process by which the commission conducts such review. The proposed rule amendments provide minor clarifications and updates.

Statutory Authority - Wisconsin Stat. sec. 103.04(2) gives the commission authority to promulgate its rules of procedure.

Explanation of Agency Authority - The Labor and Industry Review commission reviews and decides appeals of decisions of administrative law judges of the Department of Workforce Development in cases arising under Wisconsin's unemployment insurance, workers compensation, employment discrimination and public accommodations discrimination laws. The commission's rules govern procedure in such appeals.

Related Statute or Rule - No federal statute or regulation requires adoption of the proposed rules or are relevant to the substance of the proposed rules. Wisconsin Statutes ss. 102.23(1)(a), 227.53(1)(a)3. and 801.50(2)(a) establish the circuit court venue provisions clarified in the rule amendments at LIRC 2.05, 3.05 and 4.04.

Plain Language Analysis - Current rules allow petition for commission review from decisions by administrative law judges of the Department of Workforce Development to be filed by facsimile transmission. Under the rule, petitions faxed and received on a given day are considered to have been received on that day, for purposes of determining timeliness, even if they are received after regular office hours. The LIRC rule conflicts with the rule of the DWD Equal Rights Division (ERD), which treats faxed documents received after regular office hours as having been received on the next business day. The ERD rule applies, because ERD is the only authorized entity to accept petitions for commission review from ERD decisions. This proposal amends the LIRC rule to clarify the special timeliness circumstances applicable to petitions from ERD decisions.

Current LIRC 1.025(4) contains a reference to the internet page for filing a LIRC petition for review in UI. A DWD agency wide email migration changes the internet "address" or page to a revised format, which is substituted in the proposed rule.

Current LIRC rules regarding judicial review erroneously state that out of state plaintiffs or petitioners should commence actions for judicial review in Dane County. This is based on outdated statutory and case law. Sections 801.50(2)(a) and 227.53(1)(a)3. of the statutes provide that actions for judicial review by out of state plaintiffs or petitioners shall be commenced in the county where the claim or dispute arose. The proposed rule amendment corrects the error.

Summary of, and comparison with, existing or proposed federal regulations - There are no federal regulations governing practice and procedure before the commission.

Comparison with rules in adjacent states - Adjacent states have higher-level administrative authorities (excepting Minnesota) for deciding appeals in unemployment insurance, workers compensation and employment discrimination cases which are analogous to the Wisconsin Labor and Industry Review Commission. Rules of practice of such authorities are generally comparable to those of the commission.

Summary of factual data and analytical methodologies - The commission has not collected any data or conducted any analyses in connection with its development of these proposed rule changes.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report - The commission has not collected any data or conducted any analyses in connection with its development of these proposed rule changes.

Effect on small business - The commission's rules of procedure affect small businesses when they are parties to cases pending before the commission. The proposed rule changes simply clarify existing rules and are not anticipated to have any effect on small businesses.

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