

Order of the Wisconsin Labor and Industry Review Commission

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.

ANALYSIS PREPARED BY THE LABOR AND INDUSTRY REVIEW COMMISSION

The rules clarify special timeliness circumstances applicable to petitions from Equal Rights Division decisions filed by facsimile transmission, update the internet "address" or page for filing petitions electronically, and note changes in the counties where out of state plaintiffs or petitioners may commence actions for judicial review of LIRC decisions, to comport with current statutes and case law.

TEXT OF RULE

SECTION 1. LIRC 1.025(3) and (4) are amended to read:

LIRC 1.025(3) Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission or of the division of the department to which the petition is being transmitted. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission. A Except in the case of a petition for review in fair employment and public accommodations cases under s.106.52 or s.111.39(5) Stats., where a facsimile transmission filed after the regular business hours of the equal rights division shall be considered filed on the next business day, a petition for review transmitted by facsimile is deemed filed on the date of transmission recorded and printed by the facsimile machine on the petition. If the commission's or department's records indicate receipt of the facsimile at a date later than that shown, then the later date shall control.

(4) Except in the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39(5), Stats., petitions for review may be filed electronically through the internet website of the commission, at the page found at <http://www.dwd.state.wi.us/lirc/petition.htm> <http://dwd.wisconsin.gov/lirc/petition.htm>. Successful filing of a petition for review electronically through the internet website of the commission will result in a display on the petitioner's internet browser of a message confirming that the petition has been successfully filed. A petition for review transmitted electronically

through the website of the commission is not deemed filed unless and until the confirmation message is displayed. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is deemed filed on the date of filing stated on the commission's electronic record of the filing.

SECTION 2. LIRC 2.05 is amended to read:

LIRC 2.05 Actions for judicial review. Judicial review of any commission decision under s. 108.09 or 108.10, Stats., shall be commenced in the manner and upon the grounds specified in ss. 108.09(7) and 102.23, Stats., and not under ch. 227 or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court within 30 days from the date the decision was mailed to the party's last known address. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there are defendants. Service by mail is effective only if the pleadings are actually received by the commission within the appeal period. The complaint shall state the grounds upon which review is sought. The action shall be commenced against the commission, and the party in whose favor the decision was made shall also be made a defendant. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. If the plaintiff is a non-resident of Wisconsin, the proceedings shall be in the circuit court ~~for Dane county~~ for the county where the claim arose. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. The appealing party shall arrange for preparation of the necessary legal documents.

SECTION 3. LIRC 3.05 is amended to read:

LIRC 3.05 Actions for 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, Stats., or s. 801.02, Stats. Either party may commence a legal action for review of the commission decision in circuit court within 30 days from the date the decision was mailed to the party's last known address. Such action is commenced only by filing a summons and complaint with the circuit court and serving an authenticated copy of the summons and the complaint upon the commission, all within 30 days. Service must be made upon a commissioner of the labor and industry review commission or an agent authorized by the commission to accept service only at the commission's office in Madison. Such service shall be deemed complete service on all parties but there shall be left with the person so served as many copies of the summons and complaint as there

are defendants. Service by mail is effective only if the pleadings are actually received by the commission within the appeal period. The complaint shall state the grounds upon which review is sought. The action shall be commenced against the commission, and the party in whose favor the decision was made shall also be made a defendant. The proceedings shall be in the circuit court of the county where the plaintiff resides except that, if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. If the plaintiff is a non-resident of Wisconsin, the proceedings shall be in the circuit court ~~for Dane county~~ for the county where the claim arose. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. The appealing party shall arrange for preparation of the necessary legal documents.

SECTION 4. LIRC 4.04 (1) is amended to read:

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~~ for the county where the dispute arose.

The attached rules shall take effect on October 1, 2009, pursuant to s. 227.22(2)(intro.), Stats.

Adopted at Madison, Wisconsin,
this 16th day of July, 2009.

Labor & Industry Review Commission

James T. Flynn, Chairperson

Robert Glaser, Commissioner

Ann L. Crump, Commissioner