

CR 88-56

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, John T. Coughlin, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Ch. ILHR 140 Unemployment Compensation Appeals Amendments were duly approved and adopted by this department on September 30, 1988.  
*(Subject)* *(Date)*

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 11:00 a.m. in the city of Madison, this 30th day of September, A.D. 1988.

John Coughlin  
Secretary

RECEIVED

OCT 3 1988  
1:20 p.m.  
Revisor of Statutes  
Bureau

12-1-88

# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1) and 108.14(2), Stats., the Department of Industry, Labor and Human Relations  creates;  amends;  repeals and recreates;  repeals and adopts rules of Wisconsin Administrative Code chapter (s):

ILHR 140  
(Number)

Unemployment Compensation Appeals  
(Title)

The attached rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin, this

date: September 30, 1988

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS

  
Secretary

RECEIVED

OCT 3 1988

Revisor of Statutes  
Bureau



# RULES in FINAL DRAFT FORM

**Rule:** ILHR 140.02(3); 140.04(3); 140.09(1), (6)&(7); 140.125; 140.18(2)&(3);  
and 140.21(4)

**Relating to:** Amendments to the Chapter Regarding Unemployment Compensation  
Appeals

CLEARINGHOUSE RULE NO. 88-56

The Wisconsin Department of Industry Labor and Human Relations proposes an order to renumber ILHR 140.09(6); to amend ILHR 140.02(3), 140.04(3), 140.09(1), 140.18(2) and (3) and 140.21(4); and to create ILHR 140.09(6) and 140.125, relating to unemployment compensation appeals.

\* \* \* \* \*

### Analysis of Proposed Rule

Statutory authority: ss. 101.02(1), 108.09(5) and 108.14(2), Stats.

Statutes interpreted: ss. 108.09(2r), 108.09(4), 108.10(2), 108.105 and 108.14(2m), Stats.

Sections 108.09(2r) and 108.10(1), Stats., specify the time limits within which any request for a hearing as to matters in initial determinations is to be received by the department. The current section ILHR 140.02(3) provides that a request for a hearing must be physically received by the department within the statutory appeal period in order to be considered timely. Section ILHR 140.02(3) further provides that an appeal which is postmarked on or prior to the last day of an appeal period but received on a subsequent day is not considered to be timely filed unless the last day for filing falls on a Saturday, Sunday or holiday as enumerated in pars. (a) through (o). The appeal must then be received on the next succeeding business day.

The proposed amendment to section ILHR 140.02(3) corrects par. (b) to show that the holiday is not January 15 but the third Monday in January (Martin

Luther King's birthday). The amendment corrects par. (n) to remove the date of January 15 from the paragraph to be consistent with the amendment to par. (b).

Section 108.09(4), Stats., provides that if a party files a request for hearing after the appeal deadline, the administrative law judge may take testimony to determine whether the appeal was late for a reason beyond the control of the party. The current section ILHR 140.04(3) provides that if, after taking testimony, the administrative law judge decides the party has established good cause for failing to timely appeal, a hearing on the merits of the case shall be scheduled. The proposed amendment to section ILHR 140.04(3) is a technical change to remove the language referring to whether the party has established good cause for the late appeal. The appropriate standard for determination after hearing testimony is whether the appeal was late for a reason beyond the control of the party; a good cause determination is not required.

Section 108.14(2m), Stats., provides that the department may issue subpoenas to compel the attendance of witnesses and the production of documents necessary in connection with any hearing. Section ILHR 140.09(1) provides that only a department deputy or an administrative law judge may issue a subpoena when requested by a party to a hearing or on behalf of the department. The proposed amendment removes the language referring to when requested by a party or on behalf of the department because the language is unnecessary. The amendment does not change the meaning or application of the section nor affect the department's authority to issue subpoenas. The amendment does not remove the right of a party to request a subpoena.

When a party to a hearing requests a subpoena under the current rules, the party is required to pay witness fees and travel expenses at or before the time of service of the subpoena. However, when the department subpoenas a witness on its own behalf, the witness is not entitled to the prepayment of fees or expenses.

The proposed section ILHR 140.09(6) allows the department to subpoena a necessary witness for a party upon a showing by the party of financial inability to prepay the witness fees and travel expenses. The placement of this proposal in a logical sequence within section ILHR 140.09 requires that the current section ILHR 140.09(6) be renumbered to 140.09(7).

Section 108.09, Stats., provides that any party to an initial determination may request a hearing as to any matter in that determination and that each of the parties shall be afforded a reasonable opportunity to be heard unless the request for a hearing is withdrawn. The proposed section ILHR 140.125 provides for the use of a written stipulation of fact in lieu of a hearing at the request of the parties. The proposed rule describes when an administrative law judge may accept a written stipulation in lieu of hearing. The proposed rule also allows an administrative law judge to accept a stipulation during a hearing under certain circumstances.

Section 108.105, Stats., provides that the department may suspend the privilege of any agent to appear before the department at hearings if the department finds that the agent has engaged in an act of fraud or misrepresentation, or repeatedly failed to comply with rules of the department. 1987 Wisconsin Act 38 amended this statute to allow the department to suspend the privilege of any agent who solicits claimants solely

for the purpose of appearing at a hearing as their agent for pay. Sections ILHR 140.18(2) and (3) implement section 108.105, Stats. The proposed amendments to sections ILHR 140.18(2) and (3) include the language on agent solicitation consistent with the recent statutory amendment.

The proposed amendment to section ILHR 140.21(4) changes to lower case the capital letters used in bureau of legal affairs, unemployment compensation division and department of industry, labor and human relations.

SECTION 1. ILHR 140.02(3) (intro.), (b) and (n) are amended to read:

ILHR 140.02(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 succeeding business day if the last day for filing falls on Saturday, Sunday, or any of the following:

(b) ~~January-15;~~ The third Monday in January;

(n) The Monday following if January 1, ~~15,~~ July 4 or December 25 falls on Sunday; and



SECTION 2. ILHR 140.04(3) is amended to read:

ILHR 140.04(3) If, after a hearing, the administrative law judge decides that a party ~~has established good cause for failing~~ 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.

SECTION 3. ILHR 140.09(1) is amended to read:

ILHR 140.09(1) Only a department deputy or an administrative law judge may issue a subpoena requested-by-a-party-to-a-hearing,-or-may-issue-a subpoena-on-behalf-of-the-department, 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.

**SECTION 4. ILHR 140.09(6) is renumbered 140.09(7).**

**SECTION 5. ILHR 140.09(6) is created to read:**

ILHR 140.09(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.

SECTION 6. ILHR 140.125 is created to read:

ILHR 140.125 STIPULATIONS. (1) After a request for a hearing is filed, the administrative law judge shall hold a hearing unless the parties stipulate to all relevant facts and request that the stipulation be used in lieu of hearing. The administrative law judge may accept the stipulation in lieu of a hearing only if all of the following occur:

(a) The parties entered into the stipulation voluntarily and it contains all the relevant facts;

(b) The parties do not stipulate to the ultimate findings of fact without the administrative law judge's approval.

(c) The stipulation is in writing and signed by the parties.

(d) The stipulation contains the following statement:

"I have read this stipulation. I certify that the facts contained in this stipulation are true, correct and complete to the best of my knowledge and belief. I know the law provides penalties for false statements to obtain benefits or to avoid liability for the payment of benefits."

(2) If the administrative law judge accepts the stipulation of the parties in lieu of a hearing, the administrative law judge shall decide the case upon the stipulation of the parties. If the administrative law judge does not accept the stipulation of the parties, the administrative law judge shall hold a hearing.

(3) At the hearing, the administrative law judge may accept a partial stipulation of relevant facts not in dispute if the stipulation is entered into the hearing record and is agreed to on the record by the parties.

SECTION 7. ILHR 140.18(2)(intro.) and (3)(intro.) are amended to read:

ILHR 140.18(2) The department may suspend under s. 108.105, Stats., the privilege of any agent to appear before the department at hearings, if the department finds that the agent has engaged in an act of fraud or misrepresentation, has engaged in the solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay. or has repeatedly failed to comply with the following:

(3) Prior to suspending the privilege of any agent to appear before the department at hearings under s. 108.09 [or 108.10], Stats., the secretary or the secretary's designee shall conduct a hearing to determine whether the privilege of such agent shall be suspended. The hearing shall be conducted under ch. 227, Stats., and the decision of the department may be appealed under s. 227.16, Stats. Upon a finding of fraud, misrepresentation, solicitation of a claimant or repeated failure to comply with departmental rules, the department shall impose the penalties as follow:

SECTION 8. ILHR 140.21(4) is amended to read:

ILHR 140.21(4). Requests for hearing tapes, transcripts and waivers of fees may be made to the ~~Bureau of Legal Affairs--Unemployment Compensation Division Department of Industry, Labor and Human Relations~~ 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.

SECTION 9. EFFECTIVE DATE. 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.



State of Wisconsin \ Department of Industry, Labor and Human Relations

Office of the Secretary  
201 E. Washington Avenue  
P.O. Box 7946  
Madison, Wisconsin 53707  
Telephone 608/266-7552

The Honorable John Plewa  
State Senator  
Joint Committee for Review of  
Administrative Rules  
337 South, State Capitol  
Madison, Wisconsin 53707

The Honorable John Antaramian  
State Representative  
Joint Committee for Review of  
Administrative Rules  
117 West, State Capitol  
Madison, Wisconsin 53707

Dear Senator Plewa and Representative Antaramian:

Pursuant to your committee's request, this implementation report is being submitted regarding the following rule:

Rule: ILHR 140.02(3); 140.04(3); 140.09(1), (6) & (7); 140.125; 140.18(2) & (3)  
and 140.21(4)

Rule Clearinghouse No. 88-56

Relating to: Amendments to the Chapter Regarding Unemployment Compensation Appeals

1. Description of the rule.

The proposed rule amendments clarify current rules regarding unemployment compensation appeals, chapter ILHR 140.





State of Wisconsin \ Department of Industry, Labor and Human Relations

Office of the Secretary  
201 E. Washington Avenue  
P.O. Box 7946  
Madison, Wisconsin 53707  
Telephone 608/266-7552

September 30, 1988

Gary Poulson  
Assistant Revisor of Statutes  
Suite 904  
30 West Mifflin Street  
Madison, Wisconsin 53703

Douglas LaFollette  
Secretary of State  
Room 271, GEF-1  
201 East Washington Avenue  
Madison, Wisconsin 53702

RECEIVED

Dear Messrs. Poulson and LaFollette:

OCT 5 1988

TRANSMITTAL OF RULE ADOPTION

Revisor of Statutes  
Bureau

CLEARINGHOUSE RULE NO. 88-56

RULE NO. ILHR 140.02(3); 140.04(3); 140.09(1), (6) & (7); 140.125; 140.18(2) & (3);

RELATING TO Amendments to the Chapter Regarding and 140.21(4)

Unemployment Compensation Appeals.

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

John T. Coughlin  
Secretary