

# **STATEMENT OF SCOPE**

## **Department of Workforce Development**

**Rule No.**

Ch. DWD 80

**Relating to:**

Procedural rules for hearings and adjudicatory functions for worker's compensation cases and similar cases

**Rule Type:**

Emergency and Permanent

**Finding/nature of emergency (Emergency Rule only)**

The Department of Workforce Development (Department) finds an emergency exists and that an emergency rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2015 Wisconsin Act 55 transferred statutory authority for worker's compensation adjudicatory functions and related rulemaking authority from the Department to the Division of Hearings and Appeals (DHA) in the Department of Administration. This transfer of statutory authority was effective January 1, 2016. 2015 Wisconsin Act 55, section 9151 (2) (g) also required the Secretary of Administration to determine which of the Department's rules primarily related to worker's compensation adjudicatory functions in order to transfer those rules to DHA. After the Secretary of Administration made that determination, the Legislative Reference Bureau (LRB) transferred the relevant rules from ch. DWD 80 to ch. HA 4 in the May 29, 2018 administrative register. Because 2015 Wisconsin Act 55 transferred rulemaking authority to DHA for worker's compensation adjudicatory functions and the LRB transferred the relevant rules to DHA, the Department currently has no rules related to worker's compensation adjudication in effect.

Worker's compensation adjudicatory functions will be transferred from DHA to return to the Department by 2025 Wisconsin Act 33, effective January 1, 2026. Under 2025 Wisconsin Act 33, DHA rules primarily related to worker's compensation adjudicatory functions in ch. HA 4, as determined by the Department Secretary, are to be transferred to the Department and will be included in ch. DWD 80 pursuant to 2025 Wisconsin Act 33, Section 143 (1) (g). The LRB is authorized to correct rules that will be transferred to the Department subject to the limitations under s. 13.92 (4) (b), Wis. Stats. Some of the rules in ch. HA 4 are duplicative of or inconsistent with rules currently in effect in ch. DWD 80 relating to non-adjudicatory matters. The emergency rule will make the appropriate amendments in ch. DWD 80 that cannot be made pursuant to 2025 Wisconsin Act 33, Section 143 (1) (g), or by the LRB under s. 13.92 (4) (b), Wis. Stats.

The emergency rule will ensure consistency and integrate policies for adjudicatory functions in ch. DWD 80. The emergency rule will also repeal rules that are not necessary for the Department to perform its duties regarding the operation of the worker's compensation program. In addition, the Department will consider whether any revisions to the transferred rules are necessary for the Department to efficiently administer its worker's compensation adjudicatory functions in a manner that is consistent with the Department's statutory authority.

An emergency rule is necessary and in the best interest of the stakeholders in the Wisconsin worker's compensation system, including injured employees, employers and worker's compensation insurance carriers. During the time the Department needs to complete the process for promulgating permanent rules for once again conducting worker's compensation adjudicatory functions, an emergency rule is essential for effectively operating adjudicatory functions, including conducting hearings, required in the Wisconsin worker's compensation system. Without the emergency rule there will be confusion and uncertainty for the parties in worker's compensation cases about the rules that apply to litigated cases beginning on January 1, 2026. The return of worker's compensation adjudicatory functions to the Department as provided in 2025 Wisconsin Act 33 cannot be successfully accomplished with the language contained in ch. HA 4 that will be transferred to the Department.

#### **Detailed description of the object of the proposed rules**

Beginning on January 1, 2016, statutory authority for worker's compensation adjudicatory functions and rules pertaining to adjudicatory functions were transferred from the Department to DHA by 2015 Wisconsin Act 55.

2025 Wisconsin Act 33 transferred worker's compensation adjudicatory functions from DHA back to the Department. 2025 Wisconsin Act 33 also provided for the transfer to the Department of rules primarily related to worker's compensation matters, as determined by the Department Secretary, effective January 1, 2026.

Beginning on January 1, 2026, rules promulgated by DHA primarily related to worker's compensation will be transferred to the Department pursuant to s. 13.92 (4) (b), Wis. Stats., and 2025 Wisconsin Act 33, s. 143 (1) (g), and the rules will remain in effect until the specific expiration date or until revised or repealed by the Department. Some rules that will be transferred are duplicative of or inconsistent with current rules in ch. DWD 80 or are unnecessary for the operation of the worker's compensation program.

The proposed emergency and permanent rules will make minor and technical changes to the transferred rules and repeal the transferred rules that are duplicative of or inconsistent with current rules in ch. DWD 80 or are otherwise unnecessary. The Department will also consider whether any of the transferred rules should be revised for the Department to efficiently administer its worker's compensation adjudicatory functions in a manner that is consistent with the Department's statutory authority.

The proposed emergency and permanent rules pertain to adjudicatory functions and hearings in worker's compensation and related cases over which Department will have jurisdiction on January 1, 2026, including:

- Worker's Compensation cases under ch. 102, Wis. Stats.
- Duty disability cases under s. 40.65 (2), Wis. Stats.
- Applications for duty disability benefits based on a mental injury under a retirement system of a county having a population of 500,000 or more under s. 59.88 (3), Wis. Stats.
- Applications for duty disability benefits for a mental injury under a retirement system of a 1st class city under s. 62.624 (2), Wis. Stats.
- Supplemental awards in cases of injury or death of a state or local government officer or employee which arose out of the performance of duties in connection with a public insurrection under s. 106.25, Wis. Stats.
- Permanently disabling injuries sustain by an inmate of a state institution in the performance of assigned work under s. 303.21, Wis. Stats.
- Special death and disability benefits for certain public employees under s. 66.191, 1981 Wis. Stats.

**Description of the existing policies relevant to the rules, new policies to be included in the rules, and an analysis of the policy alternatives**

2025 Wis. Act 33 transferred adjudicatory functions for worker's compensation and related claims from DHA to the Department. The policy underlying the procedural rules is for the Department to return to its traditional practices of providing the efficient administration of adjudicatory functions for worker's compensation and related cases.

The policy alternative is to do nothing. If the Department does not move forward with the proposed emergency and permanent rules, there will be ambiguity and confusion regarding the application of current rules in ch. DWD 80 and rules transferred to the Department under s. 13.92 (4) (b), Wis. Stats.

**Detailed explanation of statutory authority for the rules (including the statutory citation and the language)**

*Section 102.15 (1) (a)*

"The department may promulgate rules as necessary to carryout its duties and functions under this chapter. The provisions of s. 103.005 relating to the adoption, publication, modification, and court review of rules or general orders of the department shall apply to all rules promulgated or general orders adopted under this chapter."

**Estimate the amount of time that state employees will spend developing the rules and of other resources necessary to develop the rules**

The estimated amount of time that state employees will spend developing the rules is 300 hours.

**List with description of all entities that may be affected by the proposed rules**

The proposed emergency and permanent rules will affect employees who sustain work-related injuries, employers, and worker's compensation insurance carriers. The proposed rules may also affect all of the following:

- Attorneys who represent injured employees, worker's compensation insurance carriers, and self-insured employers
- Chiropractic Society of Wisconsin
- Health Care Provider Advisory Committee
- Self-Insurers Council
- Wisconsin Manufacturers and Commerce
- Wisconsin Insurance Alliance
- Wisconsin Chiropractic Association
- Wisconsin Hospital Association
- Wisconsin Medical Society
- Wisconsin Physical Therapy Association
- Worker's Compensation Advisory Council
- Worker's compensation insurance carriers and self-insured employers who are liable to pay claims.

**Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rules**

There are no existing or proposed federal regulations related to these proposed rules.

**Anticipated economic impact of implementing the rules (note if the rules are likely to have a significant economic impact on small business)**

The proposed emergency and permanent rules will have no significant economic impact locally or statewide. The proposed rules will have no significant economic impact on small business.

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