Chapter ILHR 140

UNEMPLOYMENT COMPENSATION APPEALS

Note: Chapter Ind-UC 140 as it existed on November 30, 1985 was repealed and a new chapter ILHR 140 was created effective December 1, 1985.

ILHR 140.001 Definitions. In this chapter, unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Administrative law judge" means the appeal tribunal appointed to conduct hearings arising under ch. 108, Stats.

(2) "Commission" means the labor and industry review commission.

(3) "Department" means the department of industry, labor and human relations.

(4) "Division" means the unemployment compensation division of the department of industry, labor and human relations.

(5) "Hearing office" means an office of the unemployment compensation division of the department of industry, labor and human relations which is responsible for the scheduling and conducting of hearings arising under ch. 108, Stats.

(6) "Local office" means an office of the unemployment compensation division of the department of industry, labor and human relations which is responsible for the processing and adjudication of unemployment compensation claims.

(7) "Representative" means any attorney or agent authorized to represent any party of which the department has notice.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; r. and recr. (7), r. (8), Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 140.01 Appeal time limits in determinations and decisions. Each initial determination issued under s. 108.09 or 108.10, Stats., shall specify the time limit within which any request for hearing is required to be received by the department under ch. 108, Stats. Each administrative law judge decision mailed to a party shall specify the time limit within which any petition for commission review is required to be received by the department or the commission under ch. 108, Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.02 Request for hearing. (1) A request for hearing as to any matter in an initial determination issued under s. 108.09 or 108.10, Stats., shall be submitted to the department. The request shall be in writing and signed by the appellant or its attorney or agent.

(2) A request for hearing is timely filed if physically received within the statutory appeal period specified under s. 108.09 or 108.10, Stats., and during regular state office hours by an employe of the division at:

(a) A local office;

(b) A hearing office; or

(c) The central administrative office of the 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.

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

(a) January 1;

(b) The third Monday in January;

(c) The third Monday in February;

(d) Good Friday;

(e) The last Monday in May;

(f) July 4;

(g) The first Monday in September;

(h) The second Monday in October;

(i) November 11;

(j) The fourth Thursday in November;

(k) December 24;

(l) December 25;

(m) December 31;

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

(o) Any other day on which mail is not delivered by the postal authorities.

(4) A request for hearing by an interstate claimant is timely filed if physically received within the statutory appeal period at one of the offices specified under sub. (2), or at a public employment office in the agent state.

(5) If a party first receives an initial determination after the statutory appeal period has expired and through no fault of that party, any request for hearing by that party is timely filed only if physically received by the department within 14 days after the party received the initial determination.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (3) (intro.), (b) and (n), Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.03 Notice of pending appeal. After a request for hearing is received, the department shall promptly notify the appellant and respondent in writing of the request receipt. The notice may also contain any information concerning the hearing which the department considers relevant.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.04 Failure to timely file request for hearing. (1) The administrative law judge shall dismiss any request for hearing which has not been timely filed unless the party filing the request establishes probable good cause that the reason for having failed to timely file the request for hearing was beyond the party's control. If the request for hearing does not contain a statement as to why the request was not timely filed, the hearing office shall mail a letter to that party requesting a written explanation as to why the request for hearing was not timely filed. The administrative law judge shall dismiss the request for hearing if the party does not respond in writing to the letter within 7 days after mailing or if the party's explanation does not establish probable good cause for failing to timely file the request for hearing.

(2) If the administrative law judge decides that probable good cause exists, the hearing office may schedule a hearing on the question of whether the party's failure to timely file the request for hearing was for a reason beyond the party's control. The hearing office may also schedule a hearing, provisionally, on the merits of the case at the same time as the hearing on the party's failure to timely file the request.

(3) If, after a hearing, the administrative law judge decides that a party 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.

(4) An administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the party's failure to timely file the request for hearing was for a reason beyond the party's control. If the administrative law judge decides this question in favor of the appellant, an administrative law judge shall then make ultimate findings and conclusions on the merits of the case.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (3), Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.05 Withdrawal of request for hearing. (1) An appellant may withdraw its request for hearing at any time before the issuance of a decision on the merits by notifying the hearing office. The administrative law judge shall issue a withdrawal decision after a withdrawal notice is received from the appellant.

(2) An appellant may submit a request to retract its withdrawal and reinstate its request for hearing. The retraction request shall be in writing and include a statement of the reason for the request. The administrative law judge may not consider a request to retract a withdrawal unless the request establishes good cause for the retraction and is received within 21 days after the withdrawal decision was mailed to the appellant.

(3) If the hearing office receives the retraction request prior to issuance of a withdrawal decision and the request establishes good cause for the retraction, the administrative law judge shall acknowledge the request by letter to the appellant. If a timely retraction request is received by the hearing office after issuance of the withdrawal decision and the request establishes good cause for the retraction, the administrative law judge shall issue a decision setting aside the withdrawal decision and the hearing office shall schedule another hearing. The administrative law judge may only issue a decision setting aside the withdrawal decision within 21 days after the withdrawal decision was mailed to the parties.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.06 Notice of hearing; contents; to whom sent; issues not on notice of hearing; consolidation of issues. (1) The department shall schedule a hearing at the earliest feasible time after the request for hearing is received. The hearing office shall mail a notice of hearing to each party.

(2) The notice of hearing shall state the time and place of the hearing, the department's statutory authority for convening the hearing and the issues to be heard. The hearing office shall mail the notice of hearing to the last-known address of each party not less than 5 days in advance of the hearing, excluding the day of mailing and the day of the hearing, unless all parties waive the notice requirement.

(3) The administrative law judge may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified at the hearing and does not object.

(4) The hearing office may consolidate for hearing or decision, or both, issues involving the same parties. To avoid needless multiplicity of hearings and decisions, the hearing office may consolidate for hearing or decision, or both, issues involving more than one appellant or more than one respondent, or both, and arising out of the same or similar circumstances.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.07 Postponement of hearings. (1) A party who requests a postponement of a hearing shall make the request known to the hearing office as soon as the party becomes aware that a postponement is necessary. Unreasonable delay by the party requesting postponement may be the basis for a denial of the request.

(2) No postponements may be granted for the mere convenience of a party. Parties are expected to arrange time off from their everyday affairs, including work and school, to attend hearings. The hearing office or administrative law judge scheduled to conduct the hearing may grant postponements only for exceptional reasons. An exceptional reason may include circumstances such as the following:

(a) Serious illness of a party or necessary witness which makes appearance inadvisable;

(b) Death of an immediate family member of a party or necessary witness;

(c) Inclement weather conditions on the day of the hearing which make it hazardous for a party or a necessary witness to travel to the hearing location;

(d) Transportation difficulties arising suddenly which prevent a party or necessary witness from traveling to the hearing location;

(e) An out-of-town business meeting of a necessary witness which was scheduled prior to receipt of the hearing notice and which cannot be re-scheduled;

(f) Commitment of an attorney or agent which was scheduled prior to his or her being retained and which cannot be re-scheduled, if the party contacted the attorney or agent within a reasonable time after receipt of the hearing notice; or

(g) A scheduling problem or other unavoidable delay on the day of the hearing which prevents the administrative law judge from completing the hearing as scheduled.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.08 Maintenance of hearing files; limited discovery; inspection of records. (1) PRE-HEARING STAGE. (a) The hearing office shall compile a hearing file for every case in which a request for hearing has been received which shall contain the papers, documents and departmental records relating to the issue of the hearing. Prior to the scheduled date of the hearing, a party to a hearing may inspect the hearing file and procure copies of file contents during regular hearing office hours at the hearing office or other convenient location as determined by the hearing office. If requested, the hearing office may mail copies of file contents to a party. The department may allow such inspection or release of file contents to a party's representative, union agent or legislator only if that individual indicates by a written or verbal statement that the individual has authorization from the party.

(b) Unless the administrative law judge orders otherwise, the sole means of discovery available to a party or representative prior to a hearing is inspection of the hearing file and procurement of copies of file contents. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09 and 108.10, Stats.

(c) The administrative law judge may deny a request to inspect the hearing file or procure copies of file contents on the day of the hearing if such inspection or procurement would delay or otherwise interfere with the hearing.

(2) HEARING STAGE. At the hearing, evidence and exhibits are open to inspection by any party or representative except that the administrative law judge may conduct a closed inspection of evidence and exhibits if the interests of justice so require. The judge may sequester from the hearing room any person, party or representative as part of the closed inspection. The judge may also issue a protective order to prohibit the parties and their representatives from disclosing any evidence and exhibits listed as confidential in the protective order if the interests of justice so require.

(3) POST HEARING STAGE. After the hearing is concluded, a party or representative may inspect any hearing file contents that the party or representative may inspect under subs. (1) and (2), including the hearing tapes, written synopsis of testimony, and any transcript which is prepared at the department's direction. Any person who is not a party or representative at the hearing may only inspect the following:

(a) The initial determination.

(b) The exhibits submitted and marked as exhibits at the hearing, whether or not received by the administrative law judge.

(c) The appeal tribunal decision issued for the hearing.

(d) The hearing tapes.

(e) The written synopsis of testimony.

(f) The transcript of the testimony, if one is prepared at the department's direction.

(4) CONFIDENTIALITY OF CERTAIN RECORDS AT ALL STAGES OF HEARING. (a) Notwithstanding subs. (1) to (3), neither an employing unit which is a party to a hearing nor its representative may inspect the worker's unemployment compensation record as that record relates to work for another employing unit unless an administrative law judge approves a request.

(b) Notwithstanding subs. (1) to (3), no party, representative or other person may inspect the following:

1. The investigation report containing the summation of interviews and the rationale used by the department in issuing the initial determination.

2. Department memoranda concerning unemployment tax litigation strategy.

3. The investigation reports of department auditors concerning the status and liability of employing units under ch. 108, Stats.

4. Evidence and exhibits examined by the administrative law judge in a closed inspection under sub. (2).

5. Evidence and exhibits declared confidential under a protective order issued by the administrative law judge.

6. The handwritten notes made by the administrative law judge at the hearing.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; r. and recr. Register, May, 1993, No. 449, eff. 6-1-93.

ILHR 140.09 Subpoenas; issuance and service; modification. (1) Only a department deputy or an administrative law judge may issue a subpoena 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.

(2) Subpoenas shall only be issued when necessary to ensure fair adjudication of the issue or issues of the hearing. The department deputy or administrative law judge may refuse to issue any subpoena if:

(a) The testimony sought is not relevant or material;

(b) The testimony sought is hearsay;

(c) The testimony sought is unduly cumulative or repetitive of other testimony to be presented by the party; or

(d) The records requested disclose business secrets.

(3) A party whose request for a subpoena has been denied by a department deputy or a hearing office may at the hearing request the administrative law judge who conducts the hearing to issue the subpoena. If the administrative law judge grants the request for a subpoena, the judge may adjourn the hearing to allow sufficient time for service of and compliance with the subpoena.

(4) The administrative law judge who is scheduled to conduct a hearing for which a subpoena has been issued may quash or modify the subpoena if the judge determines that the witness or tangible things subpoenaed are not necessary to a fair adjudication of the issues of the hearing or that the subpoena has not been served in the proper manner.

(5) The party to whom a subpoena is issued shall serve the subpoena as provided under ch. 885, Stats., and pay the witness fee and travel expenses specified under s. ILHR 140.20 to the subpoenaed witness at or before the time of service.

(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.

(7) If any witness fails to comply with a subpoena issued under this section, the department may petition a judge or court commissioner for a writ of attachment under s. 885.12, Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (1), renum. (6) to be (7), cr. (6), Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.10 Hearing procedure; order of witnesses; public hearing and exclusion of certain persons; oral decisions. (1) All testimony shall be given under oath or affirmation. The administrative law judge shall administer the oath or affirmation to each witness. No person who refuses to swear or affirm the veracity of his or her testimony may testify. Each party shall be given an opportunity to examine and cross-examine witnesses. However, the administrative law judge may limit the cross-examination of witnesses to reasonable bounds so as not to prolong the hearing unnecessarily and unduly burden the record.

(2) The administrative law judge has the responsibility to develop the facts and may call and examine any witness that he or she deems necessary and may also determine the order in which witnesses are called and the order of examination of each witness. The administrative law judge may deny the request of any party to examine a witness adversely. The administrative law judge may hear closing arguments from the parties but may limit the time of such arguments. The administrative law judge may adjourn and continue a hearing to a future date when the hearing cannot be completed in the time scheduled.

(3) The administrative law judge may, upon motion of a party or upon the judge's own motion, exclude witnesses from the hearing room until called to testify and may instruct the excluded witnesses not to discuss the matter being heard until the hearing has been concluded. The administrative law judge may close the hearing to any person to the extent necessary to protect the interests and rights of either party to a fair hearing. This subsection does not authorize exclusion of a party who is a natural person; one officer or employe of a party which is not a natural person; or a person whose presence is shown by a party to be essential to the presentation of the party's case.

(4) The administrative law judge may refuse admittance to or exclude any person who disrupts the hearing. The administrative law judge may recess or adjourn the hearing if any person is disruptive to the conduct of the hearing. The administrative law judge may prohibit any attorney or agent who has been excluded from, or refused admittance to, a hearing from representing a party at this hearing or any continuance thereof. The administrative law judge shall offer a party whose attorney or agent has been excluded or refused admittance an opportunity to secure another attorney or agent.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.11 Telephone hearings. (1) The department may conduct hearings in whole or in part by telephone when it is impractical for the department to conduct an in-person hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location. When 2 or more parties are involved, the evidence shall be presented during the same hearing unless the department determines that it is impractical to do so. A party scheduled to appear by telephone may appear in person at the administrative law judge's location. The department may postpone or adjourn a hearing initially scheduled as a telephone hearing and reschedule the hearing for an in-person appearance if circumstances make it impractical to conduct a telephone hearing.

(2) The administrative law judge may dismiss the request for hearing if the appellant is scheduled to testify by telephone and fails to provide the hearing office with a telephone number within a reasonable time prior to the hearing. The administrative law judge may refuse to allow a respondent scheduled for a telephone hearing to offer testimony if the respondent fails to provide the hearing

office with a telephone number within a reasonable time prior to the hearing.

(3) The administrative law judge may dismiss the request for hearing if the appellant cannot be reached at the telephone number furnished to the hearing office within 15 minutes after the scheduled starting time for the hearing. The administrative law judge shall place at least 2 calls to the telephone number furnished by the appellant within the 15-minute period and one of the calls shall be made 15 minutes after the scheduled starting time for the hearing. The administrative law judge may refuse to allow a respondent to testify if the respondent cannot be reached at the telephone number furnished to the hearing office 5 minutes after the scheduled starting time for the hearing. The provisions of ss. ILHR 140.15 and 140.16 apply to telephone hearings.

(4) The hearing office shall mark and mail the exhibits for a telephone hearing to both parties as soon as possible prior to the date of the hearing. The hearing office may refuse to mark and mail any exhibits received from a party less than 7 days prior to the scheduled date of the hearing.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.12 Admissibility of evidence; administrative notice. (1) Statutory and common law rules of evidence and rules of procedure applicable to courts of record are not controlling with respect to hearings. The administrative law judge shall secure the facts in as direct and simple a manner as possible. Testimony having reasonable probative value is admissible; but irrelevant, immaterial and repetitious testimony is not admissible. Hearsay testimony is admissible if the testimony has probative value but no finding made in disposition of an issue may be based solely on hearsay unless the hearsay testimony is admissible under ch. 908, Stats. The investigation report containing the summation of interviews and the rationale used by the department deputy in issuing the initial determination is not admissible. A statement of a party obtained during the department deputy's investigation may be admitted into evidence at the hearing if the statement is properly authenticated.

(2) The administrative law judge may take administrative notice of any department records, any generally recognized fact or any established technical or scientific fact but the parties shall be given an opportunity to object and to present evidence to the contrary before the administrative law judge issues a decision.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

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.

History: Cr. Register, November, 1988, No. 395, eff. 12-1-88.

ILHR 140.13 Form of decision. (1) The administrative law judge may issue an oral decision at the hearing on the matters at issue but the judge shall confirm the oral decision with a written decision. The only decision which is appealable is the written decision.

(2) The decision of the administrative law judge shall be in writing and shall contain ultimate findings of fact and conclusions of law. The findings of fact shall consist of concise and separate statements of fact necessary to support the conclusions of law without recital of evidence. The decision shall contain the reasons and rationale which logically follow from the findings of fact to the conclusions of law.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.14 Parties who fail to appear; general provisions. All parties are expected to appear at the hearing location no later than the starting time listed on the notice of hearing. If the appellant does not appear within 15 minutes after the scheduled starting time of the hearing, the administrative law judge may issue a dismissal decision unless the provisions of s. ILHR 140.15 apply. If the respondent does not appear within 5 minutes after the scheduled starting time of the hearing and the appellant is present, the administrative law judge may commence the hearing.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.15 Appellant failure to appear. (1) DISMISSAL FOR NONAPPEARANCE. If the appellant fails to appear at a hearing, the administrative law judge may issue a decision dismissing the request for hearing, provided that the hearing office has complied with the notice requirements of s. ILHR 140.06 (2).

(2) EXCUSE RECEIVED PRIOR TO ISSUANCE OF DECISION AND PROBABLE GOOD CAUSE ESTABLISHED. If, before a decision under sub. (1) is mailed, the department receives a written excuse from the appellant which establishes probable good cause for nonappearance at the hearing, the administrative law judge shall so notify each party and the hearing office shall reschedule the hearing. The administrative law judge may include the issue of good cause as an additional issue at the rescheduled hearing for an ultimate finding and conclusion of whether there was good cause for the appellant's nonappearance.

(3) EXCUSE RECEIVED PRIOR TO ISSUANCE OF DECISION AND NO PROBABLE GOOD CAUSE ESTABLISHED. If, before a decision under sub. (1) is mailed, the department receives a written excuse from the appellant which does not establish probable good cause for nonappearance at the hearing, the administrative law judge shall issue a decision dismissing the request for hearing. The decision shall also state the reason the appellant's excuse does not establish probable good cause for nonappearance.

(4) EXCUSE RECEIVED WITHIN 21 DAYS AFTER ISSUANCE OF DECISION AND PROBABLE GOOD CAUSE ESTABLISHED. If, within 21 days after a decision under sub. (1) is mailed, the department receives a written excuse from the appellant which establishes probable good cause for nonappearance, the administrative law judge shall set aside the dismissal decision and the hearing office shall schedule another hearing. The administrative law judge may include the issue of probable good cause as an additional issue at the rescheduled hearing for an ultimate finding and conclusion of whether there was good cause for the appellant's nonappearance.

(5) EXCUSE RECEIVED WITHIN 21 DAYS AFTER ISSUANCE OF DECISION AND NO PROBABLE GOOD CAUSE ESTABLISHED. If, within 21 days after a decision under sub. (1) is mailed, the department receives a written excuse from the appellant which does not establish probable good cause for nonappearance at the hearing, the administrative law judge shall set aside the dismissal decision and issue another decision which shall dismiss the request for hearing and state the reason the appellant's excuse does not establish probable good cause for nonappearance.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.16 Respondent failure to appear. (1) REGULAR ISSUANCE OF DECISION. If the respondent fails to appear at a hearing but the appellant is present, the administrative law judge shall proceed to hold the hearing and may issue a decision on the merits without further hearing, provided that the hearing office has complied with the notice requirements of s. ILHR 140.06 (2).

(2) EXCUSE RECEIVED PRIOR TO ISSUANCE OF DECISION AND PROBABLE GOOD CAUSE ESTABLISHED. If, before a decision unfavorable to the respondent is mailed under sub. (1), the department receives a written excuse from the respondent which establishes probable good cause for nonappearance at the hearing, the administrative law judge shall so notify each party and the hearing office shall reschedule the hearing for further testimony. The administrative law judge may include the issue of good cause as an additional issue at the next hearing for an ultimate finding and conclusion of whether there was good cause for the respondent's nonappearance.

(3) EXCUSE RECEIVED PRIOR TO ISSUANCE OF DECISION AND NO PROBABLE GOOD CAUSE ESTABLISHED. If, before a decision unfavorable to the respondent is mailed under sub. (1), the department receives a written excuse from the respondent which does not establish probable good cause for nonappearance at the hearing, the administrative law judge shall issue a decision based on the testimony presented at the initial hearing. The decision shall also state the reason the respondent's excuse does not establish probable good cause for nonappearance unless the decision issued is favorable to the respondent.

(4) EXCUSE RECEIVED WITHIN 21 DAYS AFTER ISSUANCE OF DECISION AND PROBABLE GOOD CAUSE ESTABLISHED. If, within 21 days after a decision unfavorable to the respondent is mailed under sub. (1), the department receives a written excuse from the respondent which establishes probable good cause for nonappearance, the administrative law judge shall set aside the initial decision and the hearing office shall schedule another hearing. The administrative law judge may include the issue of probable good cause as an additional issue at the next hearing for an ultimate finding and conclusion of whether there was good cause for the respondent's nonappearance. If the administrative law judge decides that the respondent did not have good cause for nonappearance at the initial hearing, the judge shall issue a decision on the merits based solely on the testimony presented at the initial hearing. The administrative law judge shall state in the decision on the merits or in a separate decision the reason the respondent's excuse does not establish good cause for nonappearance.

(5) EXCUSE RECEIVED WITHIN 21 DAYS AFTER ISSUANCE OF DECISION AND NO PROBABLE GOOD CAUSE ESTABLISHED. If, within 21 days after a decision unfavorable to the respondent is mailed under sub. (1), the department receives a written excuse from the respondent which does not establish probable good cause for nonappearance at the hearing, the administrative law judge shall either issue an amended decision or set aside the initial decision and issue another decision which shall include the reason the respondent's excuse does not establish probable good cause for nonappearance.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.17 Representation of parties; fees. (1) Any party may appear on the party's own behalf at any hearing under this chapter or may be represented by an attorney or agent.

(2) No attorney or agent may charge or receive from a claimant for services performed in representing a party in any proceeding under s. 108.09, Stats., more than 10% of the maximum benefits at issue in the hearing unless the department has approved a specified higher fee before the claimant is charged. When approving fees, the department shall consider whether extended benefits or any other state or federal unemployment benefits are at issue. Any request for waiver of the 10% limitation on fees shall be submitted in writing to the central administrative office of the 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.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.18 Rules of conduct for agents; suspension of agent privilege; penalties. (1) In order to protect the integrity and fairness of the unemployment compensation appeals process, and to ensure the orderly and efficient operation of the hearing offices, the department requires agents to comply with the following rules of conduct:

(a) An agent shall appear at the hearing location no later than the starting time listed on the notice of hearing;

(b) An agent who requests the postponement of a hearing shall make the request known to the hearing office

within a reasonable time after the agent becomes aware that a postponement is necessary;

(c) An agent who desires a subpoena shall make the request known to the department as soon as the need for a subpoena is determined;

(d) An agent shall comply with all directions given by an administrative law judge during a hearing;

(e) An agent may not use dilatory tactics during a hearing;

(f) An agent may not engage in abusive conduct or threaten or cause physical harm to any administrative law judge, other employe of the department, or any party, witness or member of the public;

(g) An agent may not attempt to harass, intimidate or provoke a fight with any person specified under par. (f);

(h) An agent may not act in a manner disruptive to the operations of a hearing office;

(i) An agent may not consult the administrative law judge assigned to a case on an ex parte basis unless notice and opportunity to participate have been provided to all parties;

(j) An agent shall act in good faith and with integrity during the representation of a party in an unemployment compensation matter;

(k) An agent shall adhere to reasonable standards of orderly and ethical conduct during the representation of a party in an unemployment compensation matter; and

(l) An agent shall, to the extent reasonably possible, restrain the party represented by that agent from improprieties in connection with the hearing.

(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:

(a) The rules of conduct under sub. (1);

(b) The time limits established in this chapter; and

(c) All other provisions in this chapter.

(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 penalties as follows:

(a) For the first finding, a suspension for 90 days;

(b) For the second finding, a suspension for 150 days; and

(c) For the third and any subsequent finding, a suspension for 210 days.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85; am. (2) (intro.) and (3) (intro.), Register, November, 1988, No. 395, eff. 12-1-88; **correction in (3) (intro.), Register, October, 1994, No. 466.**

ILHR 140.19 Departmental assistance for handicapped persons. (1) In this section:

(a) "Handicapped person" means any person who, by reason of an impairment of sight, hearing or speech, may be hindered or prevented from communicating at a hearing as effectively as a person who is not so affected.

(b) "Ease of access" means the physical characteristics of a building which allow a person with a temporary or permanent incapacity or disability to enter, circulate within and leave the building and to use the public toilet facilities and passenger elevators in the building without assistance.

(2) The department may, at its own expense, provide a person to assist a handicapped person in communicating at a hearing, if the handicapped person notifies the department within a reasonable time prior to the date of the hearing and the department determines that the handicap is of a type which may hinder or prevent the handicapped person from communicating.

(3) If the handicapped person makes arrangements on his or her own behalf to have a person assist him or her in communicating, the department may reimburse such person for fees and travel expenses at the rate specified for interpreters under s. ILHR 140.20, if the department determines that such person is necessary to assist the handicapped person in communicating.

(4) The department shall attempt to schedule all of the hearings in buildings which have ease of access for any person with a temporary or permanent incapacity or disability. The administrative law judge may postpone and reschedule any hearing in which such a person who is a party to the hearing does not have ease of access into the building in which the hearing is scheduled.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.20 Witness and interpreter fees; travel expenses. (1) The administrative law judge may require the department to reimburse any witness subpoenaed by a party or any party who has already made reimbursement to such a witness for witness fees and travel expenses. The administrative law judge may also require reimbursement for an interpreter who is necessary to interpret testimony of a witness offered at the hearing.

(2) The department may refuse to reimburse a witness subpoenaed on behalf of a party other than the department for a witness fee or travel expenses if the administrative law judge determines that the testimony was not relevant or material to the issue of the hearing.

(3) No witness subpoenaed on behalf of or requested to appear by the department is entitled to prepayment of witness fees or travel expenses but any such witness who appears at the hearing shall be paid the fees and travel expenses provided under sub. (4).

(4) The fees of witnesses and interpreters are:

(a) For witnesses, $16.00 per day;

(b) For expert witnesses, the rate set under s. 814.04 (2), Stats., plus the fees under pars. (a) and (d);

(c) For interpreters, $24.00 per half day; and

(d) For travel expenses, 20¢ per mile from the witness's or interpreter's residence in this state to the hearing site and back.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

ILHR 140.21 Transcripts and tapes. (1) Copies of hearing transcripts may be obtained from the labor and industry review commission under s. LIRC 2.04.

(2) Under s. 108.09 (5), Stats., if testimony at a hearing is recorded on a recording machine, the department may furnish a person with a copy of the hearing tape in lieu of a transcript. The fee is $5.00 per cassette or any part thereof. The department may waive this fee if the person is unable to pay the fee.

(3) If testimony at a hearing is transcribed by a reporter and no hearing tape is available, the department may furnish a person who so requests with a transcript of the hearing. The fee is $2.50 per page or a minimum fee of $10.00 for the preparation of a transcript. The department may waive this fee if the person is unable to pay for a transcript.

(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, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.