

# RULES CERTIFICATE

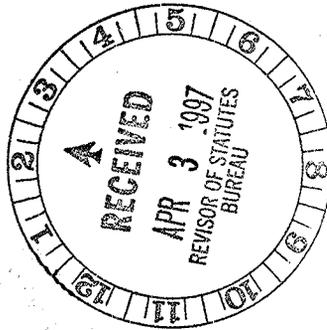
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF )  
WORKFORCE DEVELOPMENT )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Unemployment Insurance Appeals were duly approved and adopted by this department on 4/2/97

(Date)

I further certify that said copy has been compared by me with the original on file in the 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 AM in the city of Madison, this 2nd day of April A.D. 1997.

*Linda Stewart*  
Secretary

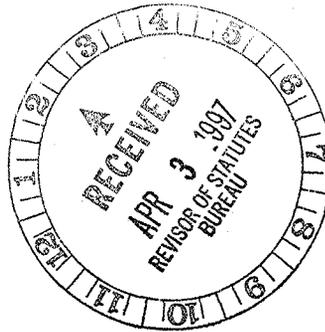
96007  
6-1-97





State of Wisconsin \ Department of Workforce Development

# RULES in FINAL DRAFT FORM



**Rule No.:** ILHR 140

**Relating to:** Unemployment Insurance Appeals

**Clearinghouse Rule No.:** 96-007

CHAPTER ILHR 140.

UNEMPLOYMENT INSURANCE APPEALS

SECTION 1. ILHR 100.02(30) is renumbered ILHR 100.02(16m) and amended to read:

ILHR 100.02(16m) "~~Handicapped person~~" "Person with a disability" 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 does not so affected have such an impairment.

SECTION 2. ILHR 132.001(1) (title) is repealed.

SECTION 3. ILHR 132.001(1) is renumbered ILHR 132.001.

SECTION 4. ILHR 132.001(2) is repealed.

SECTION 5. ILHR 140.001(2) (a) is amended to read:

ILHR 140.001(2) (a) "Division" means the unemployment ~~compensation~~ insurance division of the department of industry, labor and human relations workforce development.

SECTION 6. ILHR 140.01 and 140.02 are repealed and recreated to read:

ILHR 140.01 HEARINGS AND APPEALS. (1) APPEAL RIGHTS. Any party to a determination issued under ss. 108.09 or 108.10, Stats., has the right to an appeal. An appeal as to any matter in a determination is a request for hearing and shall be filed with the department by the appellant or its representative. Each determination issued under ss. 108.09 or 108.10, Stats., shall specify the time limit within which any appeal is required to be filed with the department under ch. 108, Stats.

(2) TIME LIMIT FOR FILING. (a) An appeal shall be filed after a copy of the determination is mailed or given to a party, whichever first occurs, as specified under ss. 108.09 or 108.10, Stats. If a party first receives a determination after the statutory appeal period has expired and through no fault of that party, the statutory appeal period as specified under ss. 108.09 or 108.10, Stats., shall extend from the date the party receives the determination. An appeal received within these time limits is timely filed. If the deadline for filing an appeal falls on a Saturday, Sunday, any of the holidays enumerated under ss. 230.35(4)(a) and 757.17, Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.

(b) An appeal shall be filed with any of the following:

1. An unemployment insurance office.
2. A hearing office.
3. The central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development.
4. An appeal by an interstate claimant may also be filed at a public employment office in the agent state under s. 108.14(8), Stats., in the manner prescribed for timely filing with the department under this section.

(c) An appeal shall be considered filed on the earliest of the following dates:

1. The date on which the department actually receives the written appeal.
2. If the appeal was mailed and bears only a United States postal service postmark, on the date of that postmark.
3. If the appeal was mailed and bears both a United States postal service postmark and a private meter mark, on the date of the United States postal service postmark.
4. If the appeal was mailed and bears only a private meter mark, on the date of the of the private meter mark.
5. If the appeal was mailed and bears no United States postal service postmark, no private meter mark, or an illegible mark, 2 business days prior to the date the appeal was actually received by the department.

6. If the appeal was sent using a delivery service other than the United States postal service, on the date the department actually receives the appeal.

7. If the appeal was faxed, the date of transmission recorded on the faxed appeal. If the fax is received without a date of transmission recording, the date actually received by the department is presumed to be the date of transmission.

Note: The address for the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development, is 201 E. Washington, room 331X, P.O. Box 8942, Madison, Wisconsin 53708-8942.

ILHR 140.02 REPRESENTATION OF PARTIES. Any party may appear on the party's own behalf at any hearing under this chapter or appear with or by a representative. The representative shall be presumed to have full authority to act on behalf of the party, including the authority to file or withdraw an appeal. The representative shall have authority to act on behalf of the party until the party or the representative terminates the representative's authorization and notifies the department that such representation has ended. No attorney whose license is suspended or who has been otherwise disbarred and prohibited from practicing law by the courts or bar association of any state may be allowed to act as a representative at any hearing under this chapter.

SECTION 7. ILHR 140.03 is amended to read:

ILHR 140.03 NOTICE OF PENDING APPEAL. ~~After a request for hearing is received, the~~ The department shall promptly notify the appellant and respondent parties in writing of the request receipt appeal after an appeal is received. The notice may also contain any information concerning the hearing which the department considers relevant.

SECTION 8. ILHR 140.04 is repealed and recreated to read:

ILHR 140.04 FAILURE TO FILE A TIMELY APPEAL. (1) The hearing office may schedule a hearing on the question of whether a late appeal was for a reason beyond the appellant's control. The hearing office may also schedule a provisional hearing on any matter in the determination at the same time as the hearing on the appellant's late appeal.

(2) The administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal was for a reason beyond the appellant's control. If the administrative law judge decides this question in favor of the appellant, the same or another administrative law judge shall then make ultimate findings of fact and conclusions of law on the merits of the case. If the administrative law judge decides that the late appeal was late for a reason within the appellant's control, the administrative law judge shall dismiss the appeal.

SECTION 9. ILHR 140.05 is amended to read:

ILHR 140.05 (title) WITHDRAWAL OF APPEAL AND RETRACTION. (1) An appellant may withdraw its ~~request for hearing~~ appeal at any time before the issuance of a decision on the merits by notifying the hearing office or by choosing not to continue to participate in a hearing. The administrative law judge shall issue a withdrawal decision after ~~a withdrawal notice is received from the appellant~~ determining that an appeal has been withdrawn.

(2) An appellant may submit a request to retract its withdrawal and reinstate its ~~request for hearing~~ appeal. The retraction request shall be in writing and include state ~~a statement of the~~ reason for the request. The administrative law judge may not ~~consider~~ grant 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 a timely retraction request ~~prior to~~ before the 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.~~

SECTION 10. ILHR 140.05 (4) is created to read:

ILHR 140.05 (4) If the hearing office receives a retraction request before or after the issuance of a withdrawal decision and the request does not establish good cause for the retraction, the administrative law judge shall deny the request by letter to the appellant.

SECTION 11. ILHR 140.06 (1) to (3) are amended to read:

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~~ appeal 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~~ 6 days ~~in advance of~~ before 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~~ receive evidence 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.

SECTION 12. ILHR 140.06 (4) is repealed and recreated to read:

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

SECTION 13. ILHR 140.07 is renumbered ILHR 140.08 and, as renumbered, is amended to read:

ILHR 140.08 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 in~~ requesting a 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~~ All parties are expected to arrange time off from their everyday affairs, including management duties, work and school, to attend hearings. The hearing office or the administrative law judge scheduled to conduct the hearing may grant ~~a postponements~~ postponement only for an exceptional ~~reasons~~ reason. 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~~ 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~~ A 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~~ a representative which was scheduled prior to his or her being retained and which cannot be re-scheduled, if the party contacted the ~~attorney or agent~~ representative within a reasonable time after receipt of the hearing notice; or

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

SECTION 14. ILHR 140.07 is created to read:

ILHR 140.07 PREHEARING CONFERENCE (1) After an appeal is filed, an administrative law judge may direct the parties to appear before the administrative law judge for a prehearing conference. In determining whether a prehearing conference is necessary, the administrative law judge may consider the following criteria:

- (a) The complexity of issues.
- (b) The number of possible witnesses.
- (c) Documentary evidence.
- (d) The number of parties involved.
- (e) Other facts which would tend to prolong the hearing.

(2) Prehearing conferences may be conducted in person or by telephone. The date and time for the prehearing conference shall be set by the hearing office. Parties shall have at least 10 days notice of the prehearing conference. The administrative law judge may adjourn the conference or order additional prehearing conferences.

(3) Following the prehearing conference, the administrative law judge shall issue an order with respect to the course of the conference on any or all of the following matters:

- (a) Definition and simplification of the issues of fact and law.
- (b) Stipulations of fact and agreements concerning the identity of or authenticity of documents.
- (c) Limitation of the number of witnesses and the exchange of the names of witnesses.
- (d) Stipulations relating to alternative methods of evidence submission and acceptance.
- (e) Such other matters as may aid in the disposition of the appeal.

(4) If a party fails to appear or is unprepared to participate in a prehearing conference, the administrative law judge may conduct a conference and enter the prehearing order without participation by the party.

SECTION 15. ILHR 140.08 is renumbered ILHR 140.09 and ILHR 140.09 (title), 140.09 (1) (b) and (4), as renumbered, are amended to read:

ILHR 140.09 (title) ACCESS TO HEARING FILES; LIMITED DISCOVERY; INSPECTION OF RECORDS.

ILHR 140.09 (1) (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 administrative law judge may also order a prehearing conference under s. ILHR 140.07. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09 and 108.10, Stats.

(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

1. The worker's unemployment compensation insurance 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.

(b) Notwithstanding subs. (1) to (3), the administrative law judge may declare all or parts of documents or other material which contains records or preserves information and which the administrative law judge examined in a closed inspection under sub. (2) to be, in whole or in part, confidential and closed to inspection by one or more parties, representatives or other persons.

(c) Notwithstanding subs. (1) to (3), evidence and exhibits declared to be confidential under a protective order issued by the administrative law judge under sub. (2) are closed to inspection as stated in the order.

~~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 (d) Notwithstanding subs. (1) to (3), no party, representative or other person, except a statutory reviewing body, as specified under ss. 108.09 and 108.10, Stats. may inspect the handwritten notes made by the administrative law judge at the hearing.~~

SECTION 16. ILHR 140.09 is renumbered 140.10 and 140.10, as renumbered, is amended to read:

ILHR 140.10 SUBPOENAS; ISSUANCE AND SERVICE; MODIFICATION. (1) Only a the department, deputy or an administrative law judge or a party's attorney of record 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 A party who desires that the department issue a subpoena shall make the request known to the department hearing office as soon as possible. Subpoenas issued by the department or an administrative law judge shall be issued on forms supplied by the department forms and may not be issued in blank.

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

- (a) The ~~testimony~~ evidence sought is not relevant or material;
- (b) The ~~testimony~~ evidence sought is hearsay;
- (c) The ~~testimony~~ evidence sought is unduly cumulative or repetitive of other ~~testimony~~ evidence to be presented by the party; ~~or~~
- (d) The ~~records~~ evidence requested ~~disclose~~ discloses 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 administrative law 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 administrative law 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~~ at whose request a subpoena is issued shall serve the subpoena as provided under ch. 885 and s. 805.07(5), Stats., and pay the witness fee fees and travel expenses specified under s. ILHR 140.20 to the subpoenaed witness at or before the time of service. An attorney issuing a subpoena shall comply with the requirements of s. 108.14(2m), Stats.

SECTION 17. ILHR 140.10 is renumbered ILHR 140.17 and ILHR 140.17 (1), and (4), as renumbered, are amended to read:

ILHR 140.17 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~~ 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.

(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 ~~disrupts~~ the hearing. The administrative law judge may prohibit any ~~attorney or agent~~ excluded representative ~~who has been excluded from a hearing~~ from representing a party at ~~this~~ that hearing or any continuance thereof. The administrative law judge shall offer a party whose ~~attorney or agent~~ representative has been excluded or refused admittance an opportunity to secure another ~~attorney or agent~~ representative.

SECTION 18. ILHR 140.11 repealed and recreated to read:

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, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location. When two 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) If the appellant is scheduled to testify by telephone and fails to provide the hearing office with the appellant's telephone number or the name and telephone number of the appellant's authorized representative within a reasonable time prior to the hearing and if the administrative law judge has made reasonable attempts to contact the appellant, the administrative law judge may dismiss the appeal. If the respondent fails to provide the hearing office with the telephone number or the name and telephone number of the

respondent's authorized representative prior to the hearing and if the administrative law judge has made reasonable attempts to contact the respondent, the administrative law judge may proceed with the hearing.

(3) If the appellant is scheduled to appear by telephone, the administrative law judge shall, within 15 minutes after the starting time for the hearing, attempt to place at least two calls to the appellant's telephone number of record or the telephone number furnished to the hearing office. One of the calls shall be attempted at or near the end of the 15 minute period unless the administrative law judge determines after reasonable efforts that the appellant cannot be reached at that number. If, within 15 minutes after the starting time for the hearing, neither the appellant nor the appellant's authorized representative can be reached at the telephone number of record or the telephone number furnished to the hearing office, then the administrative law judge may dismiss the appeal.

(4) If the respondent is scheduled to appear by telephone, the administrative law judge may proceed with the hearing if, within 5 minutes after the starting time for the hearing, neither the respondent nor the respondent's authorized representative can be reached at the respondent's telephone number of record or the telephone number furnished to the hearing office. The administrative law judge may refuse to allow a respondent to testify if the administrative law judge is unable to reach the respondent or the respondent's authorized representative and neither the respondent nor the respondent's authorized representative have contacted the hearing office within 15 minutes after the starting time for the hearing. The respondent shall be considered to have failed to appear for the hearing if the administrative law judge so refuses. The respondent may appeal such a finding under this chapter.

(5) All parties shall remain available for the hearing up to one hour after the scheduled starting time in the event the administrative law judge is unable to timely place a telephone call due to a delay in the prior hearings or other unforeseen circumstances. If the respondent cannot be contacted by telephone within one hour of the scheduled starting time of the hearing, the administrative law judge may proceed with the hearing if the appellant has appeared. If the appellant cannot be contacted within one hour of the scheduled starting time of the hearing, the administrative law judge may dismiss the appeal.

(6) The hearing office shall mark and mail the potential exhibits for a telephone hearing from the hearing file to both parties as soon as possible prior to the date of the telephone hearing. A party may submit additional documents as potential exhibits by simultaneously mailing those documents to the hearing office and copies to the other party. A party may submit potential exhibits which are not documents in the manner designated by the hearing office to which the case is assigned. The administrative law judge conducting the hearing may refuse to consider any documents not received by the hearing office or the other party within at least 3 days prior to the hearing.

SECTION 19. ILHR 140.12 is renumbered ILHR 140.18 and, as renumbered, is amended to read:

ILHR 140.18 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~~ Evidence having reasonable probative value is admissible, but irrelevant, immaterial and repetitious ~~testimony~~ evidence is not admissible. Hearsay ~~testimony~~ evidence is admissible if ~~the testimony~~ it has reasonable probative value but no ~~finding made in disposition of an issue~~ may be based decided solely on hearsay evidence unless the hearsay ~~testimony~~ evidence 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 having reasonable probative value 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.

SECTION 20. ILHR 140.125 is renumbered ILHR 140.12 and, as renumbered, is amended to read:

ILHR 140.12 STIPULATIONS. (1) After a request for a hearing an appeal is filed, ~~the administrative law judge shall hold a hearing unless~~ the parties may stipulate to all relevant facts and request that the stipulation be used in lieu of a 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~~

(b) The stipulation contains all the relevant and necessary facts as determined by the administrative law judge.

~~(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 shall be held unless the administrative law judge provides the parties with additional opportunities to submit an acceptable stipulation.~~

SECTION 21. ILHR 140.13 is renumbered ILHR 140.20 and ILHR 140.20 (2), as renumbered, is amended to read:

ILHR 140.20 (2) The written 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~~ findings 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.

SECTION 22. ILHR 140.14 is renumbered ILHR 140.13 and, as renumbered, is amended to read:

ILHR 140.13 PARTIES WHO FAIL TO APPEAR, GENERAL PROVISIONS. All parties ~~are expected to~~ who are required to appear in person shall 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~~ dismiss the appeal. 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. The provisions of s. 108.09 (4) Stats. apply as to the rights of the parties and procedures to be followed with regard to the failure of either party to appear at a hearing under this chapter.

SECTION 23. ILHR 140.15 and 140.16 are repealed.

SECTION 24. ILHR 140.17 is amended to read:

ILHR 140.17 (title) FEES FOR REPRESENTATION OF PARTIES. (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 representative may charge or receive from a claimant for services performed in representing a party in any proceeding under s. 108.09, Stats., representation in a dispute concerning benefit eligibility or liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats., concerning such a dispute, a fee which, in the aggregate, is more than 10 percent of the maximum benefits at issue in the hearing unless the department has approved a specified higher fee before the claimant is charged. When a request for waiver of the 10 percent limitation is received 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 percent limitation on fees shall be submitted in writing to the central administrative office of the bureau of legal affairs, unemployment compensation insurance division, department of workforce development. The department is not authorized under s. 108.13, Stats., to assign any past or future benefits for the collection of attorney fees.

Note: The address of the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development, 201 E. Washington Avenue , P.O. Box 8942, Madison, Wisconsin 53708-8942

SECTION 25. ILHR 140.18 is renumbered ILHR 140.16. and ILHR 140.16 (1) (g), (2) and (3), as renumbered, are amended to read:

ILHR 140.16 (1) (g) An agent may not attempt to harass, intimidate or provoke a ~~fight~~ physical confrontation with any person specified under par. (f).

(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:

(b) The time limits established in this chapter ~~and~~ .

(c) All other provisions in this chapter.

(3) (a) For the first finding under sub. (2), the department shall impose a suspension for ~~90~~ 150 days;

(b) For the second finding under sub. (2), the department shall impose a suspension for ~~150~~ 300 days; ~~and~~ .

(c) For the third and any subsequent finding under sub. (2), the department shall impose a suspension for ~~240~~ 300 to 500 days.

SECTION 26. ILHR 140.19 (1) is repealed.

SECTION 27. ILHR 140.19 is renumbered ILHR 140.21 and ILHR140.21, as renumbered, is amended to read:

ILHR 140.21 (title) DEPARTMENTAL ASSISTANCE FOR PERSONS WITH DISABILITIES AND HEARING IMPAIRMENTS. (1) The department may, at its own expense, provide a person to assist a ~~handicapped~~ person with a hearing impairment in communicating at a hearing, if the ~~handicapped~~ person with a hearing impairment notifies the department within a reasonable time prior to the date of the hearing and the department determines that the ~~handicap~~ impairment is of a type which may hinder or prevent the ~~handicapped~~ person from communicating.

(2) If the ~~handicapped~~ person with a hearing impairment 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 140.22, if the department determines that such person is necessary to assist the ~~handicapped~~ person with the hearing impairment in communicating.

(3) The department shall attempt to schedule ~~all of the~~ hearings in buildings which have ease of access for any ~~persons~~ 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 or a necessary witness to the hearing does not have ease of access into the building in which the hearing is scheduled.

SECTION 28. ILHR 140.20 is renumbered ILHR 140.22 and ILHR 140.22 (1), (2), and (4) (c), and (d), as renumbered, are amended to read:

ILHR 140.22 WITNESS AND INTERPRETER FEES; TRAVEL EXPENSES. (1) The administrative law judge may ~~require the department to reimburse~~ authorize reimbursement to 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~~ fees or travel expenses if the administrative law judge determines that the testimony was not relevant or material to the issue of the hearing.

(4) (c) For interpreters, ~~\$24.00~~ \$35.00 per half day; ~~and~~.

(d) For travel expenses, 20 cents per mile from the ~~witness's~~ witness' or interpreter's residence in this state to the hearing site and back or, if without the state, from the point at which the witness passes the state boundary to the hearing site, and back.

SECTION 29. ILHR 140.20 (3) is created to read:

ILHR 140.20 (3) The decision of the administrative law judge shall specify the time limit within which any petition for commission review is required to be filed with the department or the commission under ch. 108, Stats., and ss. LIRC 1.02 and 2.01.

SECTION 30. ILHR 140.21 is renumbered ILHR 140.23 and ILHR 140.23 (2), and (3), as renumbered, are amended to read:

ILHR 140.23 (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~~ \$7.00 per cassette ~~or any part thereof~~. The department may waive this fee if the department is satisfied that 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 department is satisfied that the person is unable to pay for a transcript.

Note: Requests for hearing tapes, transcripts and waivers of fees may be made to the bureau of legal affairs, unemployment insurance division, department of workforce development, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708-8942. (608)266-3174.

SECTION 31. ILHR 140.21 (4) is repealed.

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.



winword\jrs\dec1696.140

Tommy G. Thompson  
Governor  
Linda Stewart  
Secretary



Mailing Address:  
201 E. Washington Avenue  
Post Office Box 7946  
Madison, WI 53707-7946  
Telephone (608) 266-7552  
Fax: (608) 266-1784

## State of Wisconsin Department of Workforce Development

April 2, 1997

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 W. Wilson St.  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 96-007

RULE NO.: ILHR Chapter 140

RELATING TO: Unemployment Insurance Appeals

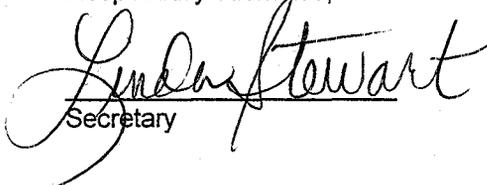
Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

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 included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

  
Secretary



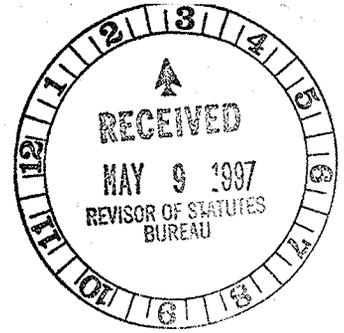
**CORRESPONDENCE / MEMORANDUM**

State of Wisconsin  
Department of Workforce Development  
*UI Bureau of Legal Affairs*  
(608) 266-6684

Date: May 9, 1997  
To: GARY POULSON  
Assistant Revisor of Statutes  
From: JOYCE S. MAHAN, Research Attorney *JM*  
Bureau of Legal Affairs  
Subject: ILHR 140

The drafter has reviewed and made revisions to ILHR 140 as you requested; sorry for the hassles. As you instructed, enclosed please find a copy of the revised rule (2 paper copies and 1 on disk). From our conversation it is my understanding that this can be processed using the old paperwork (certificate of adoption etc.). A copy has also been sent to the Secretary of State. Am I correct in assuming that the effective date for this will now be July 1?





CHAPTER ILHR 140.

UNEMPLOYMENT INSURANCE APPEALS

SECTION 1. ILHR 100.02(30) is renumbered ILHR 100.02(44m) and amended to read:

ILHR 100.02(44m) "~~Handicapped person~~" "Person with a disability" 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 does not so affected have such an impairment.

SECTION 2. ILHR 132.001(1) (title) is repealed.

SECTION 3. ILHR 132.001(1) is renumbered ILHR 132.001.

SECTION 4. ILHR 132.001(2) is repealed.

SECTION 5. ILHR 140.001(2) (a) is amended to read:

ILHR 140.001(2) (a) "Division" means the unemployment ~~compensation~~ insurance division of the department of industry, labor and human relations workforce development.

SECTION 6. ILHR 140.01 and 140.02 are repealed and recreated to read:

ILHR 140.01 HEARINGS AND APPEALS. (1) APPEAL RIGHTS. Any party to a determination issued under ss. 108.09 or 108.10, Stats., has the right to an appeal. An appeal as to any matter in a determination is a request for hearing and shall be filed with the department by the appellant or its representative. Each

determination issued under ss. 108.09 or 108.10, Stats., shall specify the time limit within which any appeal is required to be filed with the department under ch. 108, Stats.

(2) TIME LIMIT FOR FILING. (a) An appeal shall be filed after a copy of the determination is mailed or given to a party, whichever first occurs, as specified under ss. 108.09 or 108.10, Stats. If a party first receives a determination after the statutory appeal period has expired and through no fault of that party, the statutory appeal period as specified under ss. 108.09 or 108.10, Stats., shall extend from the date the party receives the determination. An appeal received within these time limits is timely filed. If the deadline for filing an appeal falls on a Saturday, Sunday, any of the holidays enumerated under ss. 230.35(4)(a) and 757.17, Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.

(b) An appeal shall be filed with any of the following:

1. An unemployment insurance office.
2. A hearing office.
3. The central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development.
4. An appeal by an interstate claimant may also be filed at a public employment office in the agent state under s. 108.14(8), Stats., in the manner prescribed for timely filing with the department under this section.

(c) An appeal shall be considered filed on the earliest of the following dates:

1. The date on which the department actually receives the written appeal.
2. If the appeal was mailed and bears only a United States postal service postmark, on the date of that postmark.
3. If the appeal was mailed and bears both a United States postal service postmark and a private meter mark, on the date of the United States postal service postmark.
4. If the appeal was mailed and bears only a private meter mark, on the date of the of the private meter mark.

5. If the appeal was mailed and bears no United States postal service postmark, no private meter mark, or an illegible mark, 2 business days prior to the date the appeal was actually received by the department.

6. If the appeal was sent using a delivery service other than the United States postal service, on the date the department actually receives the appeal.

7. If the appeal was faxed, the date of transmission recorded on the faxed appeal. If the fax is received without a date of transmission recording, the date actually received by the department is presumed to be the date of transmission.

Note: The address for the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development, is 201 E. Washington, room 331X, P.O. Box 8942, Madison, Wisconsin 53708-8942.

ILHR 140.02 REPRESENTATION OF PARTIES. Any party may appear on the party's own behalf at any hearing under this chapter or appear with or by a representative. The representative shall be presumed to have full authority to act on behalf of the party, including the authority to file or withdraw an appeal. The representative shall have authority to act on behalf of the party until the party or the representative terminates the representative's authorization and notifies the department that such representation has ended. No attorney whose license is suspended or who has been otherwise disbarred and prohibited by the courts or bar association of any state may be allowed to act as a representative at any hearing under this chapter.

SECTION 7. ILHR 140.03 is amended to read:

ILHR 140.03 NOTICE OF PENDING APPEAL. ~~After a request for hearing is received, the~~ The department shall promptly notify the ~~appellant and respondent~~ parties in writing of the ~~request receipt~~ appeal after an appeal is received. The notice may also contain any information concerning the hearing which the department considers relevant.

SECTION 8. ILHR 140.04 is repealed and recreated to read:

ILHR 140.04 FAILURE TO FILE A TIMELY APPEAL. (1) The hearing office may schedule a hearing on the question of whether a late appeal was for a reason beyond the appellant's control. The hearing office may also schedule a provisional hearing on any matter in the determination at the same time as the hearing on the appellant's late appeal.

(2) The administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal was for a reason beyond the appellant's control. If the administrative law judge decides this question in favor of the appellant, the same or another administrative law judge shall then make ultimate findings of fact and conclusions of law on the merits of the case. If the administrative law judge decides that the late appeal was late for a reason within the appellant's control, the administrative law judge shall dismiss the appeal.

SECTION 9. ILHR 140.05 is amended to read:

ILHR 140.05 (title) WITHDRAWAL OF APPEAL AND RETRACTION. (1) An appellant may withdraw its ~~request for hearing~~ appeal at any time before the issuance of a decision on the merits by notifying the hearing office or by choosing not to continue to participate in a hearing. The administrative law judge shall issue a withdrawal decision after ~~a withdrawal notice is received from the appellant~~ determining that an appeal has been withdrawn.

(2) An appellant may submit a request to retract its withdrawal and reinstate its ~~request for hearing~~ appeal. The retraction request shall be in writing and include state ~~a statement of the~~ reason for the request. The administrative law judge may not ~~consider~~ grant 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~~ a timely retraction request ~~prior to~~ before the 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.~~

SECTION 10. ILHR 140.05 (4) is created to read:

ILHR 140.05 (4) If the hearing office receives a retraction request before or after the issuance of a withdrawal decision and the request does not establish good cause for the retraction, the administrative law judge shall deny the request by letter to the appellant.

SECTION 11. ILHR 140.06 (1) to (3) are amended to read:

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~~ appeal 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 6~~ 6 days ~~in advance of~~ before 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~~ receive evidence 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.

SECTION 12. ILHR 140.06 (4) is repealed and recreated to read:

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

SECTION 13. ILHR 140.07 is renumbered ILHR 140.08 and, as renumbered, is amended to read:

ILHR 140.08 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 in~~ requesting a 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~~ All parties are expected to arrange time off from their everyday affairs, including management duties, work and school, to attend hearings. The hearing office or the administrative law judge scheduled to conduct the hearing may grant ~~a postponements~~ postponement only for an exceptional reasons reason. 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~~ 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~~ A 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~~ a representative which was scheduled prior to his or her being retained and which cannot be re-scheduled, if the party contacted the ~~attorney or agent~~ representative within a reasonable time after receipt of the hearing notice; or

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

SECTION 14. ILHR 140.07 is created to read:

ILHR 140.07 PREHEARING CONFERENCE (1) After an appeal is filed, an administrative law judge may direct the parties to appear before the administrative law judge for a prehearing conference. In determining whether a prehearing conference is necessary, the administrative law judge may consider the following criteria:

- (a) The complexity of issues.
- (b) The number of possible witnesses.
- (c) Documentary evidence.
- (d) The number of parties involved.
- (e) Other facts which would tend to prolong the hearing.

(2) Prehearing conferences may be conducted in person or by telephone. The date and time for the prehearing conference shall be set by the hearing office. Parties shall have at least 10 days notice of the prehearing conference. The administrative law judge may adjourn the conference or order additional prehearing conferences.

(3) Following the prehearing conference, the administrative law judge shall issue an order with respect to the course of the conference on any or all of the following matters:

- (a) Definition and simplification of the issues of fact and law.
- (b) Stipulations of fact and agreements concerning the identity of or authenticity of documents.
- (c) Limitation of the number of witnesses and the exchange of the names of witnesses.
- (d) Stipulations relating to alternative methods of evidence submission and acceptance.
- (e) Such other matters as may aid in the disposition of the appeal.

(4) If a party fails to appear or is unprepared to participate in a prehearing conference, the administrative law judge may conduct a conference and enter the prehearing order without participation by the party.

SECTION 15. ILHR 140.08 is renumbered ILHR 140.09 and ILHR 140.09 (title), 140.09 (1) (b) and (4), as renumbered, are amended to read:

ILHR 140.09 (title) ACCESS TO HEARING FILES; LIMITED DISCOVERY; INSPECTION OF RECORDS.

ILHR 140.09 (1) (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 administrative law judge may also order a prehearing conference under s. ILHR 140.07. The provisions of ch. 804, Stats., do not apply to hearings under ss. 108.09 and 108.10, Stats.

(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

1. The worker's unemployment compensation insurance 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.

(b) Notwithstanding subs. (1) to (3), the administrative law judge may declare all or parts of documents or other material which contains records or preserves information and which the administrative law judge examined in a closed inspection under sub. (2) to be, in whole or in part, confidential and closed to inspection by one or more parties, representatives or other persons.

(c) Notwithstanding subs. (1) to (3), evidence and exhibits declared to be confidential under a protective order issued by the administrative law judge under sub. (2) are closed to inspection as stated in the order.

~~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~~ (d) Notwithstanding subs. (1) to (3), no party, representative or other person, except a statutory reviewing body, as specified under ss. 108.09 and 108.10, Stats. may inspect the handwritten notes made by the administrative law judge at the hearing.

SECTION 16. ILHR 140.09 is renumbered 140.10 and 140.10, as renumbered, is amended to read:

ILHR 140.10 SUBPOENAS; ISSUANCE AND SERVICE; MODIFICATION. (1) Only a the department, deputy or an administrative law judge or a party's attorney of record 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 A party who desires that~~ the department issue a subpoena shall make the request known to the ~~department~~ hearing office as soon as possible. Subpoenas issued by the department or an administrative law judge shall be issued on ~~forms supplied by the department~~ forms and may not be issued in blank.

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

- (a) The ~~testimony~~ evidence sought is not relevant or material;
  - (b) The ~~testimony~~ evidence sought is hearsay;
  - (c) The ~~testimony~~ evidence sought is unduly cumulative or repetitive of other ~~testimony~~ evidence to be presented by the party; or,
  - (d) The ~~records~~ evidence requested ~~disclose~~ discloses 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 administrative law 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 administrative law 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~~ at whose request a subpoena is issued shall serve the subpoena as provided under ch. 885 and s. 805.07(5), Stats., and pay the witness fee fees and travel expenses specified under s. ILHR 140.20 to the subpoenaed witness at or before the time of service. An attorney issuing a subpoena shall comply with the requirements of s. 108.14(2m), Stats.

SECTION 17. ILHR 140.10 is renumbered ILHR 140.15 and ILHR 140.15 (1), and (4), as renumbered, are amended to read:

ILHR 140.15 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~~ 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.

(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~~ disrupts the hearing. The administrative law judge may prohibit any ~~attorney or agent~~ excluded representative who has been excluded from a hearing from representing a party at this that hearing or any continuance thereof. The administrative law judge shall offer a party whose ~~attorney or agent~~ representative has been excluded or refused admittance an opportunity to secure another ~~attorney or agent~~ representative.

SECTION 18. ILHR 140.11 repealed and recreated to read:

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, when necessary to ensure a prompt hearing or when one or more of the parties would be required to travel an unreasonable distance to the hearing location. When two 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) If the appellant is scheduled to testify by telephone and fails to provide the hearing office with the appellant's telephone number or the name and telephone number of the appellant's authorized representative within a reasonable time prior to the hearing and if the administrative law judge has made reasonable attempts to contact the appellant, the administrative law judge may dismiss the appeal. If the respondent fails to provide the hearing office with the telephone number or the name and telephone number of the respondent's authorized representative prior to the hearing and if the administrative law judge has made reasonable attempts to contact the respondent, the administrative law judge may proceed with the hearing.

(3) If the appellant is scheduled to appear by telephone, the administrative law judge shall, within 15 minutes after the starting time for the hearing, attempt to place at least two calls to the appellant's telephone number of record or the telephone number furnished to the hearing office. One of the calls shall be attempted at or near the end of the 15 minute period unless the administrative law judge determines after reasonable efforts that the appellant cannot be reached at that number. If, within 15 minutes after the starting time for the hearing, neither the appellant nor the appellant's authorized representative can be reached at the telephone number of record or the telephone number furnished to the hearing office, then the administrative law judge may dismiss the appeal.

(4) If the respondent is scheduled to appear by telephone, the administrative law judge may proceed with the hearing if, within 5 minutes after the starting time for the hearing, neither the respondent nor the respondent's authorized representative can be reached at the respondent's telephone number of record or the telephone number furnished to the hearing office. The administrative law judge may refuse to allow a respondent to testify if the administrative law judge is unable to reach the respondent or the respondent's authorized representative and neither the respondent nor the respondent's authorized representative have contacted the hearing office within 15 minutes after the starting time for the hearing. The respondent shall be considered to have failed to appear for the hearing if the administrative law judge so refuses. The respondent may appeal such a finding under this chapter.

(5) All parties shall remain available for the hearing up to one hour after the scheduled starting time in the event the administrative law judge is unable to timely place a telephone call due to a delay in the prior hearings or other unforeseen circumstances. If the respondent cannot be contacted by telephone within one hour of the scheduled starting time of the hearing, the administrative law judge may proceed with the hearing if the appellant has appeared. If the appellant cannot be contacted within one hour of the scheduled starting time of the hearing, the administrative law judge may dismiss the appeal.

(6) The hearing office shall mark and mail the potential exhibits for a telephone hearing from the hearing file to both parties as soon as possible prior to the date of the telephone hearing. A party may submit additional documents as potential exhibits by simultaneously mailing those documents to the hearing office and copies to the other party. A party may submit potential exhibits which are not documents in the manner designated by the hearing office to which the case is assigned. The administrative law judge conducting the hearing may refuse to consider any documents not received by the hearing office or the other party within at least 3 days prior to the hearing.

SECTION 19. ILHR 140.12 is renumbered ILHR 140.16 and, as renumbered, is amended to read:

ILHR 140.16 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~~ Evidence having reasonable probative value is admissible, but irrelevant, immaterial and repetitious ~~testimony~~ evidence is not admissible. Hearsay ~~testimony~~ evidence is admissible if the ~~testimony~~ it has reasonable probative value but no ~~finding made in disposition of an issue may be based~~ decided solely on hearsay evidence unless the hearsay ~~testimony~~ evidence 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 having reasonable probative value 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.

SECTION 20. ILHR 140.125 is renumbered ILHR 140.12 and ILHR 140.12 (1) and (2) as renumbered are amended to read:

ILHR 140.12 STIPULATIONS. (1) After ~~a request for a hearing~~ an appeal is filed, the ~~administrative law judge shall hold a hearing unless~~ the parties may stipulate to all relevant facts and request that the stipulation be used in lieu of a 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~~

(b) The stipulation contains all the relevant and necessary facts as determined by the administrative law judge.

~~(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 shall be held unless the administrative law judge provides the parties with additional opportunities to submit an acceptable stipulation~~

SECTION 21. ILHR 140.13 is renumbered ILHR 140.17 and ILHR 140.17 (2), as renumbered, is amended to read:

ILHR 140.17 (2) The written 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~~ findings 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.

SECTION 22. ILHR 140.14 is renumbered ILHR 140.13 and, as renumbered, is amended to read:

ILHR 140.13 PARTIES WHO FAIL TO APPEAR; GENERAL PROVISIONS. All parties are ~~expected to who are required to appear in person shall~~ 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 440.15 apply~~ dismiss the appeal. 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. The provisions of s. 108.09 (4) Stats. apply as to the rights of the parties and procedures to be followed with regard to the failure of either party to appear at a hearing under this chapter.

SECTION 23. ILHR 140.15 and 140.16 are repealed.

SECTION 24. ILHR 140.17 is renumbered ILHR 140.18 and, as renumbered, is amended to read:

ILHR 140.18 (title) FEES FOR REPRESENTATION OF PARTIES. ~~(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~~ representative may charge or receive from a claimant for ~~services performed in representing a party in any proceeding under s. 108.09, Stats., representation in a dispute concerning benefit eligibility or liability for overpayment of benefits, or in any administrative proceeding under ch. 108, Stats., concerning such a dispute, a fee which, in the aggregate, is more than 10 percent of the maximum benefits at issue in the hearing unless the department has approved a specified higher fee before the claimant is charged. When a request for waiver of the 10 percent limitation is received 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 percent limitation on fees shall be submitted in writing to the central administrative office of the bureau of legal affairs, unemployment ~~compensation~~ insurance division, department of industry, labor and human relations workforce development. The department is not authorized under s. 108.13, Stats., to assign any past or future benefits for the collection of attorney fees.

Note: The address of the central administrative office of the bureau of legal affairs, unemployment insurance division, department of workforce development is; 201 E. Washington Avenue , P. O. Box 8942, Madison, Wisconsin 53708-8942

SECTION 25. ILHR 140.17 (3) (as renumbered from ILHR 140.13 in section 21 herein) is created to read:

ILHR 140.17 (3) The decision of the administrative law judge shall specify the time limit within which any petition for commission review is required to be filed with the department or the commission under ch. 108, Stats., and ss. LIRC 1.02 and 2.01.

SECTION 26. ILHR 140.18 is renumbered ILHR 140.14. and ILHR 140.14 (1) (g), (2) and (3), as renumbered, are amended to read:

ILHR 140.14 (1) (g) An agent may not attempt to harass, intimidate or provoke a ~~fight~~ physical confrontation with any person specified under par. (f).

(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:

(b) The time limits established in this chapter ~~and~~ .

(c) All other provisions in this chapter.

(3) (a) For the first finding under sub. (2), the department shall impose a suspension for 90 150 days;.

(b) For the second finding under sub. (2), the department shall impose a suspension for 450 300 days; and .

(c) For the third and any subsequent finding under sub. (2), the department shall impose a suspension for ~~240~~ 300 to 500 days.

SECTION 27. ILHR 140.19 is amended to read:

ILHR 140.19 (title) DEPARTMENTAL ASSISTANCE FOR PERSONS WITH DISABILITIES AND HEARING IMPAIRMENTS. (1) The department may, at its own expense, provide a person to assist a ~~handicapped~~ person with a hearing impairment in communicating at a hearing, if the ~~handicapped~~ person with a hearing impairment notifies the department within a reasonable time prior to the date of the hearing and the department determines that the ~~handicap~~ impairment is of a type which may hinder or prevent the ~~handicapped~~ person from communicating.

(2) If the ~~handicapped~~ person with a hearing impairment 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 140.22, if the department determines that such person is necessary to assist the ~~handicapped~~ person with the hearing impairment in communicating.

(3) The department shall attempt to schedule ~~all of the~~ hearings in buildings which have ease of access for any ~~persons~~ 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 or a necessary witness to the hearing does not have ease of access into the building in which the hearing is scheduled.

SECTION 28. ILHR 140.20 (1), (2), and (4) (c), and (d) are amended to read:

ILHR 140.20 WITNESS AND INTERPRETER FEES; TRAVEL EXPENSES. (1) The administrative law judge may ~~require the department to reimburse~~ authorize reimbursement to 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 fees or travel expenses if the administrative law judge determines that the testimony was not relevant or material to the issue of the hearing.

(4) (c) For interpreters, ~~\$24.00~~ \$35.00 per half day; ~~and,~~

(d) For travel expenses, 20 cents per mile from the witness's witness' or interpreter's residence in this state to the hearing site and back or, if without the state, from the point at which the witness passes the state boundary to the hearing site, and back.

SECTION 29. ILHR 140.21 (2), and (3) are amended to read:

ILHR 140.21 (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~~ \$7.00 per cassette ~~or any part thereof~~. The department may waive this fee if the department is satisfied that 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 department is satisfied that the person is unable to pay for a transcript.

Note: Requests for hearing tapes, transcripts and waivers of fees may be made to the bureau of legal affairs, unemployment insurance division, department of workforce development, 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708-8942.

SECTION 30. ILHR 140.21 (4) is repealed.

Tommy G. Thompson  
Governor  
Linda Stewart  
Secretary



Mailing Address:  
201 E. Washington Avenue  
Post Office Box 7946  
Madison, WI 53707-7946  
Telephone (608) 266-7552  
Fax: (608) 266-1784

## State of Wisconsin Department of Workforce Development

April 2, 1997

- Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 W. Wilson St.  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 96-007

RULE NO.: ILHR Chapter 140

RELATING TO: Unemployment Insurance Appeals

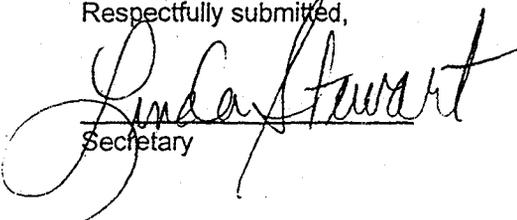
Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

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 included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

  
Secretary

