

1 Clearinghouse Rule 15-031

2 Rules Clearinghouse No. _____

Proposed Hearing Draft
March 23, 2015

PROPOSED ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
AMENDING AND ADOPTING RULES

3 The Wisconsin department of workforce development proposes the following order *to*
4 *create* DWD 80.13, relating to the worker's compensation program and audio recording of a
5 worker's compensation hearing.

**Analysis Prepared by the Department of
Workforce Development**

Statutes interpreted

Statutes Interpreted: Section 102.15, Stats.

Statutory authority

Statutory Authority: ss. 102.15 (1) and 103.005 (1), Stats.

Explanation of statutory authority

Chapter 102, Stats., governs the state's worker's compensation program. The department has general rule-making authority under s. 102.15 (1), Stats., to adopt rules of procedure and s. 103.005 (1), Stats., to adopt reasonable and proper rules and regulations relative to exercise of its powers and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

Related statutes or rules

Chapter 102, Stats. relating to worker's compensation.

Plain language analysis

This proposed rule will create DWD 80.13 to allow a party to a worker's compensation case to audio record the proceedings of a formal hearing in a non-disruptive and non-obstructive manner; and only when verbal notice is given to the administrative law judge and all parties involved prior to the start of the hearing and before recording begins.

The right to audio record the proceedings of a formal hearing is limited to the parties in the case. The proposed rule allows a party to voluntarily record a hearing for the party's own purposes and is not considered the official transcript or record of the hearing. The official transcript and record of the hearing are provided under s. 102.15 (3), Stats.

Under this proposed rule, the administrative law judge can establish conditions for the audio recording of the proceedings of a formal hearing to avoid disruption or obstruction of the hearing.

Summary of, and comparison with, existing or proposed federal statutes and regulations

There are no proposed or existing federal statutes or regulations related to the proposed rule.

Comparison with rules in adjacent states

In Minnesota rule R 1420.2900, subpart 9, covers disruption of hearings. This rule states "...No television, video, digital, still, or other camera, and no electronic recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the judge. Permission is subject to conditions set by the judge to avoid disruption of the hearing..."

The proposed rule differs from the Minnesota rule by specifically permitting a party to audio record the proceedings of a formal hearing with notice to the administrative law judge. With the proposed rule a party is not required to obtain permission from the administrative law judge before audio recording the proceedings of a formal hearing. In both this proposed rule and the Minnesota rule, the presiding administrative law judge has the authority to establish conditions for the audio recording of the hearing to avoid disruptions and obstructions of the hearing.

There are no similar rules in Illinois, Iowa or Michigan.

Summary of factual data and analytical methodologies

Proposed rule changes were developed after consultation with the Worker's Compensation Advisory Council.

Analysis and supporting documents used to determine effect on small business or in preparation of the economic impact analysis

The proposed rule will have no effect on small business. The proposed hearing draft will be posted for 14-days to solicit public comment on any economic impact.

Effect on small business

The proposed rule is primarily procedural in nature and will have no effect on small businesses.

Agency contact person

James T. O'Malley, Director Bureau of Legal Services
Department of Workforce Development
Worker's Compensation Division
P. O. Box 7901
Madison, WI 53707-7901
Telephone: (608) 267-6704
Email: Jim.OMalley@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

James T. O'Malley, Director Bureau of Legal Services
Department of Workforce Development
Worker's Compensation Division
P. O. Box 7901
Madison, WI 53707-7901
Telephone: (608) 267-6704
Email: Jim.OMalley@dwd.wisconsin.gov

The department will hold a hearing on April 28, 2015 and public comments will be accepted until May 1, 2015.

-
- 1 **SECTION 1. DWD 80.13 is created to read:**
- 2 DWD 80.13 Audio recording of formal hearings. (1) (a) A party to a claim may audio
- 3 record the proceedings of a formal hearing in a non-disruptive and non-obstructive manner.
- 4 (b) A party shall provide verbal notice of audio recording the proceedings of a formal
- 5 hearing to the presiding administrative law judge and all other parties in attendance before audio
- 6 recording of the hearing begins.
- 7 (c) The presiding administrative law judge shall determine if audio recording of the
- 8 proceedings of the formal hearing disrupts or obstructs the hearing.

1 (d) The presiding administrative law judge may set conditions for audio recording of a
2 formal hearing to avoid disruption or obstruction of the hearing.

3 (e) The audio recording of the proceedings of a formal hearing does not constitute the
4 official record of the hearing. The official transcript and record of the proceedings of a formal
5 hearing are provided under s. 102.15 (3), Stats.

6 **SECTION 2. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on the
7 first day of the month following publication in the Wisconsin administrative register, as provided
8 under s. 227.22 (2) (intro.).

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Reginald Newson, Secretary