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Chapter DWD 140

UNEMPLOYMENT INSURANCE 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Note: Chapter Ind–UC 140 as it existed on November 30, 1985 was repealed and a new chapter ILHR 140 was created effective December 1, 1985. Chapter ILHR 140 was renumbered Chapter DWD 140 under s. 13.93 (2m) (b) 1., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DWD 140.001 Definitions. (1) IN GENERAL. Except as provided in sub. (2), the definitions in ch. DWD 100 apply to this chapter.

(2) IN THIS CHAPTER. Notwithstanding ch. DWD 100, the following words and phrases have the designated meanings:

(ag) "Affiant" means a person who swears to an affidavit.

(am) "Affidavit" means a written statement sworn under oath before a notary public or other person authorized by law to verify sworn statements and must be based upon personal knowledge or upon information and belief.

(ar) "Division" means the unemployment insurance division of the department of workforce development.

(b) "Representative" means any attorney or agent who the department has notice is authorized to represent any party.

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, r. (intro.), (2), (3) and (6), renum. (1) and (5) to 100.02 (1) and (32) and am., renum. (4) and (7) to (2) (a) and (b) and am. (b), cr. (1), (2) (title) and (intro.), Register, September, 1995, No. 477, eff. 10–1–95; am. (2) (a), Register, June, 1997, No. 498, eff. 7–1–97; **CR 13–106: am. (1), (2) (intro.), renum. (2) (a) to (ar), cr. (2) (ag), (am) Register July 2014 No. 703, eff. 8–1–14.**

DWD 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 995.20, 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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; r. and recr., Register, June, 1997, No. 498, eff. 7–1–97**;** correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register June 2007 No. 618.

DWD 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

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the courts or bar association of any state may be allowed to act as a representative at any hearing under this chapter.

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; r. and recr., Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.03 Notice of pending appeal. The department shall promptly notify the parties in writing of the appeal after an appeal is received. 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; am. Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; am. (3), Register, November, 1988, No. 395, eff. 12–1–88; r. and recr. Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.05 Withdrawal of appeal and retraction. (1) An appellant may withdraw its 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 determining that an appeal has been withdrawn.

(2) An appellant may submit a request to retract its withdrawal and reinstate its appeal. The retraction request shall be in writing and state a reason for the request. The administrative law judge may not 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 a timely retraction request 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.

(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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; am. (1) to (3), cr. (4), Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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 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 6 days before the hearing, unless all parties waive the notice requirement.

(3) The administrative law judge may 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.

(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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; am. (1) to (3), r. and recr. (4), Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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.

History: Cr. Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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 in requesting a postponement may be the basis for denial of the request.

(2) No postponements may be granted for the mere convenience of a party. 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 postponement only for an exceptional reason. An exceptional reason may include circumstances such as the following:

(a) Serious illness of a party or necessary witness;

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

(c) 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;

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(e) 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 a representative which was scheduled prior to his or her being retained and which cannot be re−scheduled, if the party contacted the representative within a reasonable time after receipt of the hearing notice; or

(g) An unavoidable delay on the day of the hearing which prevents the administrative law judge from conducting the hearing as scheduled.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; renum. from ILHR 140.07 and am., Register, June, 1997, No. 498, eff. 7−1−97.

DWD 140.09 Access to 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 administrative law judge may also order a prehearing conference under s. DWD 140.07. 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), and also the hearing recording, written synopsis of testimony, and any transcript that is prepared at the department's direction. Any person who is not a party or representative at the hearing may inspect only the following and only if social security numbers have been redacted from the documents:

(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 recording.

(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:

1. The worker's unemployment insurance record as that record relates to work for another employing unit unless an administrative law judge approves a request.

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.

(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.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85; r. and recr. Register, May, 1993, No. 449, eff. 6−1−93; renum. from ILHR 140.08 and am., Register, June, 1997, No. 498, eff. 7−1−97; CR 08−019: am. (3) (intro.) and (d) Register July 2008 No. 631, eff. 8−1−08.

DWD 140.10 Subpoenas; issuance and service; modification. (1) Only the department, 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. A party who desires that the department issue a subpoena shall make the request known to the hearing office as soon as possible. Subpoenas issued by the department or an administrative law judge shall be issued on department forms and may not be issued blank.

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

(a) The evidence sought is not relevant or material.

(b) The evidence sought is hearsay.

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

(d) The evidence requested discloses business secrets.

(3) A party whose request for a subpoena has been denied 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 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 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 fees and travel expenses specified under s. DWD 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.

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(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. DWD 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; renum. from ILHR 140.09 and am., Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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 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) 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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; r. and recr., Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.12 Stipulations. (1) After an appeal is filed, the parties may stipulate to 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;

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

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

(2) If the administrative law judge does not accept the stipulation of the parties, a hearing shall be held unless the administrative law judge provides the parties with additional opportunities to submit an acceptable stipulation.

(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; renum. from ILHR 140.125 and am., Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.13 Parties who fail to appear; general provisions. All parties 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 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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; renum. from ILHR 140.14 and am., Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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. The administrative law judge may limit the cross–examination of witnesses so as not to 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

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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 employee 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 exclude any person who disrupts the hearing. The administrative law judge may recess or adjourn the hearing if any person disrupts the hearing. The administrative law judge may prohibit any excluded representative from representing a party at that hearing or any continuance. The administrative law judge shall offer a party whose representative has been excluded or refused admittance an opportunity to secure another representative.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; renum. from ILHR 140.10 and am. (1) and (4), Register, June, 1997, No. 498, eff. 7–1–97.

DWD 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. Evidence having reasonable probative value is admissible, but irrelevant, immaterial and repetitious evidence is not admissible. Hearsay evidence is admissible if it has reasonable probative value but no issue may be decided solely on hearsay evidence unless the hearsay evidence is admissible under ch. 908, Stats.

(2) The administrative law judge may take administrative notice of any department records, generally recognized fact or 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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; renum. from ILHR 140.12 and am., Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.17 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 written decision of the administrative law judge shall contain ultimate findings of fact and conclusions of law. The findings of fact shall consist of concise and separate findings necessary to support the conclusions of law. The decision shall contain the reasons and rationale which follow from the findings of fact to the conclusions of law.

(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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; renum. from ILHR 140.13, am. (2) and cr. (3), Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.18 Fees for representation of parties. No representative attorney may charge or receive from a claimant for 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% of the maximum benefits at issue unless the department has approved a specified higher fee before the claimant is charged. When a request for waiver of the 10% limitation is received, 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 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 is; 201 E. Washington Avenue, P.O. Box 8942, Madison, Wisconsin 53708–8942.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; renum. and am. from ILHR 140.17, Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.19 Departmental assistance for persons with disabilities and hearing impairments. (1) The department may, at its own expense, provide a person to assist a person with a hearing impairment in communicating at a hearing, if the 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 impairment is of a type which may hinder or prevent the person from communicating.

(2) If the 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. DWD 140.20, if the department determines that such person is necessary to assist the person with the hearing impairment in communicating.

(3) The department shall attempt to schedule hearings in buildings which have ease of access for any person with a temporary or permanent incapacity or disability. The administrative law judge may 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.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85, r. (1) (intro.), renum. (1) (a) and (b) to 100.02 (30) and (17), renum. (2), (3) and (4) to (1), (2) and (3), Register, September, 1995, No. 477, eff. 10–1–95; am. Register, June, 1997, No. 498, eff. 7–1–97; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537.

DWD 140.20 Witness and interpreter fees; travel expenses. (1) The administrative law judge may 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 witness fees 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, $35.00 per half day.

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

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; am. (1), (2), (4) (c) and (d), Register, June, 1997, No. 498, eff. 7–1–97.

DWD 140.21 Transcripts and recordings. (1) Copies of hearing transcripts may be obtained from the labor and industry review commission under s. LIRC 1.045.

Removed by Register May 2019 No. 761. For current adm. code see: http://docs.legis.wisconsin.gov/code/admin_code.

(2) Under s. 108.09 (5), Stats., if testimony at a hearing is recorded, the department may furnish a person with a copy of the hearing recording in lieu of a transcript. The fee is $7.00 per compact disk. The department may waive this fee if the department is satisfied that the person is unable to pay.

Note: Requests for hearing recordings 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.

History: Cr. Register, November, 1985, No. 359, eff. 12−1−85**;** am. (2) and (3) and r. (4), Register, June, 1997, No. 498, eff. 7−1−97; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register June 2007 No. 618; CR 08−019: am. (title) and (2), r. (3) Register July 2008 No. 631, eff. 8−1−08.

DWD 140.22 Standard affidavit form. (1) IN GENERAL. (a) Personal knowledge is the recognition of facts through firsthand observation or experience.

(b) Information and belief is not based on firsthand observation or experience but is based on secondhand information that is sworn as true.

(c) The department's standard affidavit form for appeals under ss. 108.09 and 108.10, Stats., is available at the department's website or by requesting a copy from the hearing office.

Note: The standard affidavit form can be found at the department's website: http://www.dwd.wisconsin.gov or by contacting any of the following hearing offices:

Eau Claire Hearing Office
715 S. Barstow Street, Suite #1
Eau Claire, WI 54701

Fox Valley Hearing Office
54 Park Place, Suite 800
Appleton, WI 54914

Madison Hearing Office
3319 W. Beltline Hwy., Room E308
P.O. Box 7975
Madison, WI 53707−7975

Milwaukee Hearing Office
819 N. 6th Street, Room 382
Milwaukee, WI 53203

(2) AFFIDAVIT REQUIREMENTS. (a) An affidavit must contain all of the following information:

1. The name and address of the affiant.
2. The signature or mark of the affiant.
3. The date the statement was sworn.
4. The signature or mark of the notary public or other person authorized by law to verify sworn statements.
5. The county and state where the statement was sworn.

(b) An affidavit based upon information and belief must state the source of the information and the grounds for the belief.

(3) PROCEDURE. (a) A party may submit an affidavit as a potential exhibit by simultaneously delivering the affidavit to the hearing office and a copy to the other party. The administrative law judge conducting the hearing may refuse to consider an affidavit not received by the hearing office and the other party at least 3 days prior to the hearing.

(b) At the hearing, the administrative law judge may accept the affidavit as evidence as provided under s. DWD 140.16.

History: CR 13−106: cr. Register July 2014 No. 703, eff. 8−1−14.