

## Chapter LIRC 1

## GENERAL

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**LIRC 1.01 General.** The labor and industry review commission has jurisdiction for review of cases arising under ss. 40.65 (2), 66.191, 1981 Stats., ss. 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

**History:** Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1982, No. 320, eff. 9-1-82; am. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1997, No. 497, eff. 6-1-97; correction made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549; CR 05-092; am. Register July 2006 No. 607, eff. 8-1-06.

**LIRC 1.015 Definitions. (1)** In chs. LIRC 1 to 4, “commission” means the Wisconsin labor and industry review commission.

**(2)** In chs. LIRC 1 to 4, “department” means the Wisconsin department of workforce development.

**History:** CR 05-092; cr. Register July 2006 No. 607, eff. 8-1-06.

**LIRC 1.02 Petitions for review; appeal period.** All petitions for commission review shall be filed within 21 days from the date of mailing of the findings and decision or order, except that the petition may be filed on the next business day if the 21<sup>st</sup> day falls on any of the following:

**(1)** January 1.

**(1m)** The third Monday in January.

**(1r)** The third Monday in February.

**(3)** The last Monday in May.

**(4)** July 4.

**(5)** The first Monday in September.

**(5m)** The second Monday in October.

**(5r)** November 11.

**(6)** The fourth Thursday in November.

**(7)** December 24, 25 or 31.

**(8)** The Monday following if January 1, July 4 or December 25 falls on Sunday.

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

**History:** Cr. Register, March, 1981, No. 303, eff. 4-1-81; am. Register, August, 1982, No. 320, eff. 9-1-82; am. (intro.), (3), (5), (6) and (8), cr. (1m), (1r), (5m) and (5r), Register, January, 1985, No. 349, eff. 2-1-85; am. (intro.) and (1m), Register, May, 1988, No. 389, eff. 6-1-88; am. Register, May, 1997, No. 497, eff. 6-1-97; CR 05-092; am. (intro.) Register July 2006 No. 607, eff. 8-1-06.

**LIRC 1.025 Petitions for review; filing. (1)** Petitions for review may be filed by mail or personal delivery. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the commission or by the division of the department to which the petition is mailed, except that petitions for review in unemployment insurance cases under s. 108.09 or 108.10, Stats., which are filed by mail or personal delivery are deemed filed when received or postmarked as provided for in s. LIRC 2.015.

**(2)** Except as provided for in subs. (3) and (4), petitions for review may not be filed by e-mail or by any other method of electronic data transmission.

**(3)** Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission or of the division of the department to which the petition is being transmitted. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission. Except in the case of a petition for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats., where a facsimile transmission filed after the regular business hours of the equal rights division shall be considered filed on the next business day, a petition for review transmitted by facsimile is deemed filed on the date of transmission recorded and printed by the facsimile machine on the petition. If the commission’s or department’s records indicate receipt of the facsimile at a date later than that shown, then the later date shall control.

**(4)** Except in the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats., petitions for review may be filed electronically through the internet website of the commission, at the page found at <http://dwd.wisconsin.gov/lirc/petition.htm>. Successful filing of a petition for review electronically through the internet website of the commission will result in a display on the petitioner’s internet browser of a message confirming that the petition has been successfully filed. A petition for review transmitted electronically through the website of the commission is not deemed filed unless and until the confirmation message is displayed. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is deemed filed on the date of filing stated on the commission’s electronic record of the filing.

**(5)** Petitions for review may not be filed by telephone.

**History:** Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 05-092: r. and recr. Register July 2006 No. 607, eff. 8-1-06; CR 09-014: am. (3) and (4) Register September 2009 No. 645, eff. 10-1-09.

**LIRC 1.026 Cross-petitions.** Any party may file a petition for review, whether or not any other party has already filed a petition for review. The filing of a petition for review by one party does not extend the time within which any other party may file a petition for review. All petitions for review, including cross-petitions, are subject to the requirements of s. LIRC 1.02 concerning timeliness.

**History:** Cr. Register, May, 1997, No. 497, eff. 6-1-97.

**LIRC 1.027 Answers.** A party opposing a petition for commission review may file an answer with the commission within 21 days from the party’s receipt of a copy of the petition. A party filing an answer with the commission shall furnish a copy to the opposing party.

**History:** Cr. Register, May, 1997, No. 497, eff. 6-1-97.

**LIRC 1.03 Withdrawals.** Requests to withdraw petitions shall be in writing. The commission may deny a request by any party to withdraw a petition if the commission has already reviewed and decided the case, but not yet issued its decision, or if the commission considers that withdrawal is not in the best interests of proper administration of the program involved. Denials of withdrawals shall be in writing, but may be included in the findings and decision of the commission.

**History:** Cr. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88.

**LIRC 1.04 Record used for review.** Review by the commission shall be based on the record of the case including the evidence previously submitted at hearing before the department. The record of the hearing may be in the form of a written synopsis or a transcript, and may include an audio recording of the hearing. The form of the record of the hearing which the commission uses in its review shall be determined as follows:

(1) Except as provided in subs. (2) through (5), the commission shall base its review on a written synopsis of the testimony taken at the hearing. The synopsis shall be prepared by the department, by the commission, or by an outside contractor, from an audio recording of the hearing or from notes taken at the hearing by the administrative law judge. In those cases any party may obtain a copy of the synopsis as provided for in s. LIRC 1.045.

(2) The commission shall base its review on a transcript of the hearing rather than a synopsis if a transcript was prepared and was used by the administrative law judge in deciding the case. In such cases any party may obtain a copy of the transcript as provided for in s. LIRC 1.045.

(3) Except in unemployment insurance cases, the commission shall base its review on a transcript of the hearing rather than a synopsis if a party timely requests the commission in writing to conduct its review on the basis of a transcript, the party certifies in such request that it has ordered preparation of a transcript at the party's own expense, and the party thereafter files a copy of the transcript with the commission and serves a copy of the transcript on all other parties. To be timely under this subsection, a request must be made no later than 14 days after the requesting party's receipt from the commission of written confirmation that a petition for commission review has been filed.

(4) The commission shall base its review on a transcript of the hearing rather than a synopsis if a party shows to the commission that the synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(5) On its own motion, the commission may base its review on a transcript of the hearing in addition to a synopsis. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(6) A transcript used pursuant to subs. (2) to (5) shall be prepared by an independent court reporter or transcriptionist and shall include a certification by the court reporter or transcriptionist that the transcript is an original, verbatim transcript of the proceedings.

(7) On its own motion, the commission may base its review on an audio recording of the hearing in addition to a synopsis or transcript.

**History:** Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 1.03 and am., Register, January, 1982, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, No. 6-1-88; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97; CR 05-092: r. and recr. Register July 2006 No. 607, eff. 8-1-06.

**LIRC 1.045 Obtaining copy of record.** A party in a case before the commission may request the commission to provide a copy of the synopsis or transcript of the testimony, exhibits received at the hearing, or other documents in the administrative record. The commission shall furnish the copies upon request but may charge a fee for photocopying of 20 cents per page. Upon proper showing of financial inability to pay for photocopying, the commission may waive the fee.

**History:** Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 05-092: am. Register July 2006 No. 607, eff. 8-1-06.

**LIRC 1.05 Hearings.** If the record in a case is inadequate for the commission to arrive at a decision, the commission shall remand the case to the department of workforce development to take additional evidence on behalf of the commission.

**Note:** The commission does not conduct hearings as part of its review.

**History:** Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 1.04, Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97.

**LIRC 1.06 Oral argument.** The commission may grant a written request for oral argument if it determines that an issue would be more clearly presented by oral argument.

**Note:** The commission does not consider oral argument to be necessary because review is on the basis of the record, the parties have the right to file briefs, and oral argument delays disposition of the petition.

**History:** Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 1.05, Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97.

**LIRC 1.07 Briefs.** Either party may request the commission to establish a briefing schedule. Requests to file briefs may be made in the petition for review, in an answer, or in writing after the petition and answer. The commission may deny a request to file a brief which is not made in a petition or answer if the commission has already reviewed the case but not yet issued its decision at the time the request is made. Each party may file with the commission briefs or memoranda within the time limits of the briefing schedule established by the commission. Requests for extensions of time for filing briefs shall be made in writing. Extensions may be approved in writing upon good cause shown. A party filing a brief or memorandum with the commission shall furnish a copy to the opposing party.

**History:** Cr. Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1997, No. 497, eff. 6-1-97.