

Chapter LIRC 1

LABOR AND INDUSTRY REVIEW COMMISSION PROCEDURE

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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), 59.88, 62.624, 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.095(6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats., and s. 66.191, 1981 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; CR 21-105: am. Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.015 Definitions. In this chapter:

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

(2) "Department" means the department of workforce development.

(3) "Division of hearings and appeals" means the division of hearings and appeals in the department of administration.

(4) "Equal rights case" means a case in which the commission has jurisdiction under s. 106.52 (4), 106.56 (4), or 111.39 (5) (a), Stats.

(5) "Equal rights division" means the division of equal rights in the department.

(6) "Unemployment insurance case" means a case in which the commission has jurisdiction under s. 108.09 (6), 108.095(6), or 108.10 (2) or (3), Stats.

(7) "Worker classification compliance case" means a case in which the commission has jurisdiction under s. 103.06 (6), Stats.

(8) "Worker's compensation case" means a case in which the commission has jurisdiction under s. 40.65, 59.88, 62.624, 102.18 (3) or (4), 303.07 (7), or 303.21, Stats., or s. 66.191, 1981 Stats.

History: CR 05-092: cr. Register July 2006 No. 607, eff. 8-1-06; CR 21-105: cr. (intro.), am. (1), (2), cr. (3) to (8) Register July 2022 No. 799, eff. 8-1-22.

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 21st 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) WHEN PETITIONS CONSIDERED FILED. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the office to which the petition is mailed or delivered, except that petitions for review in unemployment insurance cases and worker classification compliance cases which are filed by mail or personal delivery are deemed filed when received or post-marked as provided for in s. LIRC 1.031.

(1e) UNEMPLOYMENT INSURANCE AND WORKER CLASSIFICATION COMPLIANCE PETITIONS; HOW TO FILE. (a) Except as provided in par. (b), a petition in an unemployment insurance case or worker classification compliance case shall be filed with the commission by one of the following methods:

1. By personal delivery at the commission's office at 3319 West Beltline Highway, 2nd Floor, Madison, WI 53713.

2. By mail to the commission's office at 3319 West Beltline Highway, P.O. Box 8126, Madison, WI 53708.

3. By facsimile transmission to (608) 267-4409.

4. On the commission's website as provided in sub. (4).

(b) A petition filed by an interstate claimant may be filed as provided in par. (a) or with a qualified employee of the agent state in which the interstate claimant files his or her claim.

(1m) WORKER'S COMPENSATION PETITIONS; HOW TO FILE. A petition in a worker's compensation case shall be filed with any of the following:

(a) The commission by any of the following methods:

1. By mail to 3319 West Beltline Highway, P.O. Box 8126, Madison, WI 53708.

2. By personal delivery to 3319 West Beltline Highway, 2nd Floor, Madison, WI 53713.

3. By facsimile transmission to (608) 267-4409.

4. On the commission's website as provided in sub. (4).

(b) The division of hearings and appeals by any of the following methods:

1. By mail or personal delivery to 4822 Madison Yards Way 5th Floor North, Madison, WI 53705, or by facsimile transmission to (608) 266-0018.

2. By mail or personal delivery to 819 North Sixth Street, Room 330, Milwaukee, WI 53203, or by facsimile transmission to (414) 227-4012.

3. By mail or personal delivery to 54 Park Place, Suite 900, Appleton, WI 54914, or by facsimile transmission to (920) 832-5355.

(c) The worker's compensation division of the department by any of the following methods:

1. By mail to 201 East Washington Avenue, P.O. Box 7901, Madison, WI 53707.

2. By personal delivery to 201 East Washington Avenue, Madison, WI 53703.

3. By facsimile transmission to (608) 260-3053.

(1s) EQUAL RIGHTS PETITIONS; HOW TO FILE. A petition for commission review in an equal rights case shall be filed with the equal rights division by any of the following methods:

(a) *Milwaukee.* By mail or personal delivery to 819 North Sixth Street, Milwaukee, WI 53203 or by facsimile transmission to (414) 227-4084.

(b) *Madison.* By mail to 201 East Washington Avenue, P.O. Box 8928, Madison, WI 53708; by personal delivery to 201 East Washington Avenue, Madison, WI 53703; or by facsimile transmission to (608) 327-6001.

(2) LIMIT ON FILING BY ELECTRONIC DATA TRANSMISSION. Petitions for review may not be filed by e-mail or, except as provided in subs. (3) and (4), by any other method of electronic data transmission.

(3) PETITIONS FILED BY FACSIMILE TRANSMISSION. (a) 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, the division of hearings and appeals, or 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.

(b) 1. Except as provided in subs. 2 and 3., a petition for review transmitted by facsimile transmission is considered filed on the date of transmission recorded and printed by the recipient facsimile machine.

2. Except as provided in subd. 3., a petition for review in an equal rights case transmitted by facsimile transmission after the regular business hours of the equal rights division is considered filed on the next business day.

3. If the commission's, the division of hearings and appeals', or department's records indicate receipt of the facsimile at a date later than the date of transmission recorded and printed by the recipient facsimile machine, then the later date shall control.

(4) PETITIONS FILED ON THE COMMISSION'S WEBSITE. (a) Except in equal rights cases, petitions for review may be filed electronically through the internet website of the commission at the following webpages:

1. For a petition in an unemployment insurance case or worker classification compliance case, https://lirc.wisconsin.gov/ui_appeal.htm.

2. For a petition in a worker's compensation case, https://lirc.wisconsin.gov/wc_appeal.htm.

(b) 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.

(c) 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) NO FILING BY TELEPHONE. 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; CR 21-105: am. (1), cr. (1e), (1m), renum. (1e) (b) and (1s) from LIRC 2.01 (2) and 4.01 and am., am. (2), renum. (3) to (3) (a), (b) 2., 3. and am., cr. (3) (b) 1., renum. (4) to (4) (a) (intro.), (b), (c) and am. (4) (a) (intro.), cr. (4) (a) 1., 2., (5) (title) Register July 2022 No. 799, eff. 8-1-22; correction in (1) made under s. 35.17, Stats., correction in (1m) (a) 2. made under s. 13.92 (4) (b) 6., and correction in (2) made under s. 13.92 (4) (b) 7., Register July 2022 No. 799.

LIRC 1.031 Timeliness of petitions in unemployment insurance cases and worker classification compliance cases. For purposes of s. 108.09 (6) (a), Stats., the words "received" and "postmarked" have the following meanings:

(1) If the petition is personally delivered, the petition is "received" when the commission physically receives the petition.

(2) If the petition is mailed and bears only a United States postal service postmark, the petition is "postmarked" on the date of that postmark.

(3) If the petition is mailed and bears both a United States postal service postmark and a private meter mark, the petition is "postmarked" on the date of the United States postal service postmark.

(4) If the petition is mailed and bears only a private meter mark, the petition is "postmarked" on the date of that mark.

(5) If the petition is mailed and bears no mark, or bears an illegible mark, the petition is "postmarked" 2 business days prior to the date the petition was physically received by the commission.

(6) If the petition is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, the petition is "postmarked" on the date of that delivery service mark.

(7) If the petition is sent using a delivery service other than the United States postal service, and does not bear a delivery service mark which is the equivalent of a United States postal service postmark, or bears an illegible delivery service mark, the petition is "postmarked" 2 business days prior to the date the petition was physically received by the commission.

History: Cr. Register, May, 1997, No. 497, eff. 6-1-97; CR 05-092: am. Register July 2006 No. 607, eff. 8-1-06; CR 21-105: renum. from LIRC 2.015 and am. (title), (1), (5), (7) Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.041 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; CR 21-105: renum. from LIRC 1.026 Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.051 Answers. A party opposing a petition for commission review may file an answer with the commission within 14 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; CR 21-105: renum. from LIRC 1.027 and am. Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.061 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; CR 21-105: renum. from LIRC 1.03 Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.071 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 or division of hearings and appeals. 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, the division of hearings and appeals, the commission, or 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 1.08.

(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 those cases any party may obtain a copy of the transcript as provided for in s. LIRC 1.08.

(3) Except in unemployment insurance cases and worker classification compliance 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 *Published under s. 35.93, Stats. Updated on the first day of each month. Entire code is always current. The Register date on each page is the date the chapter was last published.*

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; CR 21-105: renum. from LIRC 1.04 and am. (intro.), (1) to (3) Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.08 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; CR 21-105: renum. from LIRC 1.045 Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.09 Hearings. Except in equal rights cases, 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 or division of hearings and appeals, as appropriate, 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; CR 21-105: renum. from LIRC 1.05 and am. Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.10 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; CR 21-105: renum. from LIRC 1.06 Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.11 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; CR 21-105: renum. from LIRC 1.07 Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.12 Rehearings in equal rights cases. The provisions of s. 227.49, Stats., with respect to rehearings shall not apply to decisions of the commission, as the commission does

not conduct hearings, and commission review under s. 111.39 (5) (b), Stats., is itself an alternative to the rehearing procedure.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 4.04, Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88; r. and recr. Register, May, 1997, No. 497, eff. 6-1-97; CR 21-105: renum. from LIRC 4.03 and am. (title) Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.13 Compromise settlements in worker's compensation cases. Under s. 102.18 (4) (d), Stats., if a compromise is reached while a case is pending commission review, the compromise shall be submitted to the commission, and the commission shall remand the case to the division of hearings and appeals or department for consideration of the compromise. If the compromise is not approved, the party who filed the petition for commission review may reinstate its petition by notifying the commission. Under s. 102.24 (2), Stats., if a compromise is reached while a case is pending court review of a commission order, remand shall be to the commission and the commission shall then remand the case to the division of hearings and appeals or department for consideration of the compromise.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC

3.06, Register, January, 1985, No. 349, eff. 2-1-85; am. Register, May, 1988, No. 389, eff. 6-1-88; renum. from LIRC 3.05 and am., Register, May, 1997, No. 497, eff. 6-1-97; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1997, No. 497; CR 05-092: am. Register July 2006 No. 607, eff. 8-1-06; CR 21-105: renum. from LIRC 3.04 and am. Register July 2022 No. 799, eff. 8-1-22.

LIRC 1.14 Actions for judicial review in unemployment insurance cases, worker classification compliance cases, and worker's compensation cases. On judicial review of a commission decision in an unemployment insurance case, a worker classification compliance case, or a worker's compensation case, service by mail is effective only if the pleadings are actually received by the commission within the appeal period. The party seeking judicial review shall arrange for preparation of the necessary legal documents.

History: Cr. Register, March, 1981, No. 303, eff. 4-1-81; renum. from LIRC 2.06 and am., Register, January, 1985, No. 349, eff. 2-1-85; r. and recr. Register, May, 1988, No. 389, eff. 6-1-88; CR 09-014: am. Register September 2009 No. 645, eff. 10-1-09; CR 21-105: renum. from LIRC 2.05 and am. Register July 2022 No. 799, eff. 8-1-22.