

## **Frequently Asked Questions (“FAQs”) about Appealing a Wisconsin Fair Employment Law Decision of the Labor and Industry Review Commission to a Wisconsin Circuit Court**

**DISCLAIMER:** The following frequently asked questions are intended solely as a guideline for those appealing Fair Employment Law decisions of the Labor and Industry Review Commission to the circuit court. It is not meant to be legal advice, nor is it legal advice in any fashion. The information does not in any way remove from the individual the responsibility to research and comply with all applicable statutory requirements for the filing and processing of an appeal of a commission decision with the circuit court. For legal advice, you may want to contact an attorney.

### **1. Do I need an attorney to appeal a commission decision to court?**

If you are an individual employee, you may represent yourself in court. If you choose to have someone represent you, the representative must be an attorney.

If you are an employer, whether or not you need an attorney depends on how your business is organized. If you are doing business as a sole proprietor, you do **not** need an attorney to appeal to court. However, if your business is organized as a corporation, a limited liability company (LLC), a partnership, a firm, an association, or a cooperative, you **must** be represented by an attorney in any appeal to court. It is the business's responsibility to determine whether it can or cannot be represented by a non-attorney in legal proceedings before courts.

### **2. How do I appeal the commission decision?**

Legal proceedings for judicial review of the commission's decision must be commenced within 30 calendar days from the date of the commission decision (not counting the date the decision was mailed to you).

- Judicial review proceedings are commenced by filing a petition for judicial review with the circuit court of Wisconsin and serving a copy of the petition for judicial review on the commission.
- The petition for judicial review is a legal document that requests the court to review the final decision of the commission. The document states who the parties are and the reasons for the lawsuit.
- The party appealing the commission decision must be named as the petitioner and the commission must be named as the respondent.
- The petition for judicial review must state the nature of the petitioner's interest, the facts showing the petitioner is a person aggrieved by the decision, and the grounds upon which review is sought.
- The proceedings must be brought in the circuit court of the county where the petitioner resides, except that, if the petitioner is a state agency, the proceedings must be in the circuit court of the county where the respondent resides. If the petitioner is a nonresident of the state, the proceedings must be in the county where the dispute arose. The proceedings may be transferred to any circuit court if the parties so stipulate and the court agrees.
- ***The petition for judicial review must be received by and filed with the court within 30 calendar days of the date of the commission's decision.*** It is not sufficient for the appeal to be postmarked to the court within 30 calendar days after the commission decision.

- The circuit court may charge a filing fee.
- ***You must also serve a copy of the petition for judicial review on the commission, either personally or by certified mail, within 30 calendar days from the date the commission decision was mailed.*** Unlike the filing of the petition with the circuit court, which must be received by the court and cannot be postmarked by the deadline date, service on the commission by certified mail is complete upon mailing and can be postmarked by the deadline.
- In addition, copies of the petition for judicial review must be served on *all other parties* who appeared before the commission (those parties in the caption of the commission's decision) no later than 30 calendar days after the proceedings have been instituted by the filing of the petition for judicial review and service on the commission. **Even if the action is commenced properly by filing the petition for judicial review and serving a copy on the commission within 30 calendar days from the date of the decision, the court action may be dismissed if copies of the petition are not also timely served upon the parties who appeared before the commission.** These copies must be served on these parties or their attorneys of record personally, by certified mail which service is complete upon mailing, or, when service is timely admitted in writing, by first class mail.

A sample form for a petition for judicial review that you may find helpful can be obtained here:

<http://lirc.wisconsin.gov/pdf/ERdecisionappealPJRform.pdf>

You are responsible for filing the correct documents.

**DISCLAIMER:** The sample petition for judicial review form made available by the Labor and Industry Review Commission is intended solely as a guideline for those appealing fair employment law decisions of the commission to the circuit court. It is not meant to be legal advice, nor is it legal advice in any fashion. The form does not in any way remove from the individual the responsibility to research and comply with all applicable statutory requirements for filing and processing an appeal of a commission decision with the circuit court. For legal advice, you may want to contact an attorney.

### 3. Where do I file the petition for judicial review?

The petition for judicial review must be filed in the circuit court of the Wisconsin county where the petitioner resides, except:

- If the petitioner is a state agency, the proceedings must be in the circuit court of the Wisconsin county where the respondent resides.
- If the petitioner is a nonresident of Wisconsin, the proceedings must be in the Wisconsin county where the claim arose.
- The proceedings may be transferred to any circuit court if all parties stipulate and that court agrees.
- For other circumstances, venue is as set forth in Wis. Stat. §801.50.

This is a link to Wisconsin circuit court websites for contact information of individual circuit courts: <http://www.wicourts.gov/contact/ccsites.htm>.

**4. Can the commission help me draft the petition for judicial review?**

No. When you file a petition for judicial review of the commission decision, you are suing the commission. As a respondent, the commission will defend its decision in the court action. The commission cannot help you draft the petition for judicial review or provide legal advice regarding an appeal.

**5. Who can assist me if I want to appeal the commission's decision?**

When you file a petition for judicial review of the commission decision, you are suing the commission. As a respondent, the commission is represented by the Wisconsin Department of Justice and will defend its decision in the court action. The commission and the Department of Justice cannot help you draft the petition for judicial review or provide legal advice regarding an appeal. You may want to contact an attorney.

**6. Can I file the petition for judicial review in another state if I am not a Wisconsin resident?**

No. The action must be brought in a Wisconsin circuit court.

This is a link to Wisconsin circuit court websites for contact information of individual circuit courts: <http://www.wicourts.gov/contact/ccsites.htm>.

**7. Will I be charged or is there a fee to file a circuit court action?**

The circuit court may charge a filing fee. Effective July 14, 2015, the total fee for appealing an administrative action for review on the record is \$129.50. The court may waive the fees if the petitioner is indigent. The petitioner needs to file a petition for waiver of fees and costs to request the court to waive the fees.

**8. Who are the parties to the case in circuit court?**

The petitioner is the person filing the appeal. The respondent is the Labor and Industry Review Commission.

**9. How do I serve copies on the other parties who appeared before the commission?**

Copies of the petition for judicial review must be served on all of the other parties who appeared before the commission in the case no later than 30 calendar days after filing the petition for judicial review with the circuit court and serving the commission with a copy of the petition. The other parties must be served with copies of the petition for judicial review even though they are not named as parties for purposes of the judicial review.

**Even if the action is commenced properly by filing the petition for judicial review and serving a copy on the commission within 30 calendar days from the date of the decision, the court action may be dismissed if copies of the petition are not also timely served upon the parties who appeared before the commission.** These copies must be served on these parties or their attorneys of record personally, by certified mail which service is complete upon mailing, or, when service is timely admitted in writing, by first class mail.

**10. How does the court review the commission decision?**

The court will review the record on appeal. The court will **not** hold a new hearing. Generally, courts assign a schedule for each party to submit written arguments or briefs. Occasionally courts schedule in-person arguments on the legal issues in the case. Courts may not make new findings of fact on appeal and generally give deference to the commission's legal conclusions. The reasons the commission decision may be overturned or set aside or modified by a circuit court are limited by statute. *See* Wis. Stat. § 227.57. Generally, to overturn a commission decision, a court must find that the commission acted without or in excess of its powers in making its decision, or that the findings of fact made by the commission do not support its decision.

**11. How long will it take for the court to decide my case?**

It is hard to predict how long a circuit court will take to decide a case. Once the petition for judicial review is filed and served on the commission, the commission's attorney must file a notice of appearance and position statement in response to the petition for judicial review. In some cases, the commission may file a motion to dismiss. The court schedules the timing of filing briefs by the parties. Once all of the issues have been briefed, the court will review the record and the briefs, and write a decision. The time this takes will vary with each court.

**12. I have a Fair Employment Law decision by an Administrative Law Judge (ALJ) from the Equal Rights Division. Can I appeal this decision to circuit court?**

No. A Fair Employment Law decision by an ALJ first must be appealed to the commission. The commission must issue its decision before the action may be filed in the circuit court. If you need to appeal a decision of an ALJ to the commission, you must file an appeal with the Equal Rights Division. Other types of decisions by ALJs from the Equal Rights Division may be appealed directly to circuit court (Family Medical Leave Act (FMLA), open housing, whistleblower protection and public employee safety and health). If you are not sure whether you can appeal your decision to the commission or to circuit court, contact the Equal Rights Division at (608) 266-6860 in Madison or (414) 227-4384 in Milwaukee.