

**State of Wisconsin
Department of Workforce Development**

NOTICE OF PUBLIC HEARING

Rule Relating to Audio Recording of a Worker's Compensation Hearing

Section DWD 80.13, Wis. Admin. Code

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on a permanent rule relating to audio recording of a worker's compensation hearing (Section DWD 80.13).

DWD will hold a public hearing on April 28, 2015 at 2:00 p.m. Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. Written comments will be accepted until Friday, May 1, 2015. Comments may be sent to the Division of Worker's Compensation at the address below, or to Jim.OMalley@dwd.wi.gov or to <http://adminrules.wisconsin.gov>.

You can obtain a free copy of the hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Workforce Development, Division of Worker's Compensation, P.O. Box 7901, Madison, WI 53707-7901. You can also obtain a copy by calling (608) 267-6704 or by emailing Jim.OMalley@dwd.wi.gov. Copies will also be available at the hearings. To view the hearing draft rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small business may also be addressed to DWD's small business regulatory coordinator Howard Bernstein at the address above, or by email to howard.bernstein@dwd.wi.gov, or by telephone at (608) 266-9427.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 261-6805 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Hearing Date and Location:

Tuesday, April 28, 2015, 2:00 p.m.
Department of Workforce Development
201 East Washington Avenue, Room B106
Madison, WI 53707

**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.

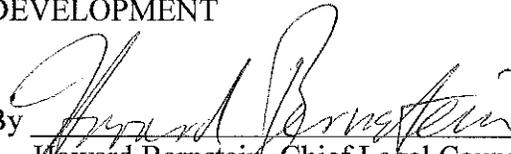
Agency contact person

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

Dated this 24th day of March, 2015.

STATE OF WISCONSIN,
DEPARTMENT OF WORKFORCE
DEVELOPMENT

By



Howard Bernstein, Chief Legal Counsel

(Authorized Designee for Reginald J. Newson, Secretary)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

DWD 80, Worker's Compensation – Creation of Section 80.13

3. Subject

Audio recording of a worker's compensation hearing

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

No fiscal effect.

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The current rules for worker's compensation administrative hearings do not allow for a party to make its own audio recording of the hearing. DWD has received a request to allow this option. This proposed rule would 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, 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.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This option will be available to any person or entity that is a party to a worker's compensation case. This would include an employee, an employer, or an insurance company.

11. Identify the local governmental units that participated in the development of this EIA.

None.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

None. The proposed rule would allow a party to pay for and make its own audio recording of a worker's compensation hearing if it chooses to do so. It does not require any party to take any action or incur any expense.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benfits - allows an additional option to a party to a worker's compensation hearing, as requested. The alternative would be to not create this new provision to allow this option.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

14. Long Range Implications of Implementing the Rule

None.

15. Compare With Approaches Being Used by Federal Government

Not applicable – there are no federal laws regulating worker's compensation insurance.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota has a rule which prohibits the use of recording devices at a worker's compensation hearing unless permitted by the administrative law judge. This rule differs by providing that an audio recording is permitted when a party gives prior verbal notice.

Iowa, Illinois and Michigan do not have any rules on this topic.

17. Contact Name

Howard Bernstein, DWD Legal Counsel

H. Bernstein 3/19/15

18. Contact Phone Number

(608) 266-9427

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)
The rule will have no economic or fiscal impact on small business.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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