Rules Clearinghouse No. 15-031

ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
AMENDING AND ADOPTING RULES

1 The Wisconsin department of workforce development adopts the following order ***to***

2 ***create*** DWD 80.13, relating to the worker's compensation program and audio recording of a

3 worker's compensation hearing.

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 when the party has provided verbal notice to the administrative law judge and all involved parties prior to the start of the hearing and before recording begins. A party must audio record the proceedings in a non-disruptive and non-obstructive manner.

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. Witnesses, participants and other attendees at the hearing, who are not parties to the case, are not permitted to audio record the proceedings of a formal hearing under the proposed rule. 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

Place where comments are to be submitted and deadline for submission

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

The department held a public hearing on this rule on April 28, 2015 and accepted written comments until May 1, 2015.

---

1 **SECTION 1. DWD 80.13 is created to read:**

2 DWD 80.13 **Audio recording of formal hearings.** (1) (a) A party to a claim may audio
3 record the proceedings of a formal hearing in a non-disruptive and non-obstructive manner.
4 (b) Witnesses, participants and other attendees, who are not parties to the case, are not
5 permitted to audio record the proceedings of a formal hearing.
6 (2) A party shall provide verbal notice of audio recording to the presiding administrative
7 law judge and all other parties in attendance at the proceedings of a formal hearing before audio
8 recording of the hearing begins.