

**ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT**

The Wisconsin Department of Workforce Development (Department) adopts the following emergency rule to create DWD 80.05, 80.08, 80.09, 80.11, 80.12, 80.13, 80.14, 80.16, 80.20, 80.22, 80.31 and 80.44 relating to worker's compensation hearings and adjudicatory functions.

The statement of scope for this emergency rule, SS 068-25, was approved by Governor Evers on October 10, 2025, published in the Wisconsin Administrative Register No. 838A2 on October 13, 2025, and approved by the Secretary of the Department of Workforce Development on October 23, 2025. This emergency rule was approved by the Governor on December 5, 2025.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

The Department finds an emergency exists and that an emergency rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2015 Wisconsin Act 55 transferred statutory authority for worker's compensation adjudicatory functions and related rulemaking authority from the Department to the Division of Hearings and Appeals (DHA) in the Department of Administration. This transfer of statutory authority was effective January 1, 2016. 2015 Wisconsin Act 55, s. 9151 (2) (g) also required the Secretary of Administration to determine which of the Department's rules primarily related to worker's compensation adjudicatory functions in order to transfer those rules to DHA. After the Secretary of Administration made that determination, the Legislative Reference Bureau (LRB) transferred the relevant rules from ch. DWD 80 to ch. HA 4 in the May 29, 2018 administrative register. Because 2015 Wisconsin Act 55 transferred rulemaking authority to DHA for worker's compensation adjudicatory functions and the LRB transferred the relevant rules to DHA, the Department currently has no rules related to worker's compensation adjudication in effect. However, the Department does have some procedural rules related to its administrative functions still in effect in ch. DWD 80.

Worker's compensation adjudicatory functions will be transferred from DHA to return to the Department by 2025 Wisconsin Act 33, effective January 1, 2026. Pursuant to 2025 Wisconsin Act 33, s. 143 (1) (g), DHA rules primarily related to worker's compensation adjudicatory functions in ch. HA 4, as determined by the Department Secretary, are to be transferred to the Department and will be included in ch. DWD. The LRB is authorized to correct rules that will be transferred to the Department subject to the limitations under s. 13.92 (4) (b), Stats. Some of the rules in ch. HA 4 are duplicative of or inconsistent with rules currently in effect in ch. DWD 80 relating to non-adjudicatory matters. This emergency rule makes appropriate amendments in ch. DWD 80 to provide the Department with authority for all procedural matters that will be under its purview as of January 1, 2026, and before the Department is able to promulgate permanent

rules. The emergency rule will also allow the Department to make further amendments to procedural rules, as warranted, to ch. DWD 80 when the permanent rule is promulgated.

An emergency rule is necessary and in the best interest of the stakeholders in the Wisconsin worker's compensation system, including injured employees, employers and worker's compensation insurance carriers. During the time the Department needs to complete the process for promulgating permanent rules to conduct worker's compensation adjudicatory functions, an emergency rule is essential for effectively operating adjudicatory functions, including conducting hearings, required in the Wisconsin worker's compensation system. Without the emergency rule there will be confusion and uncertainty for the parties in worker's compensation cases about the rules that apply to litigated cases beginning on January 1, 2026. The return of worker's compensation adjudicatory functions to the Department as provided in 2025 Wisconsin Act 33 cannot be successfully accomplished simply by the Department adopting the language contained in ch. HA 4 that will be transferred to the Department.

Statutes Interpreted

Ch. 102, Stats.

Statutory Authority

Sections 102.15 (1) (a) and 103.005 (1), Stats.

Explanation of statutory authority

Section 102.15 (1) (a), Stats., grants the Department the specific authority to promulgate rules necessary to carry out its duties and functions under ch. 102, Stats. Section 103.005 (1), Stats., grants the Department the general authority to adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

Related statutes or rules

None, except ch. HA 4, which is discussed above.

Plain language analysis

The emergency rule brings ch. DWD 80 in compliance with 2025 Wisconsin Act 33 by returning adjudicatory procedural provisions to ch. DWD 80 that are necessary for the Department to conduct worker's compensation adjudicatory functions, including hearings. The emergency rule's sections do the following:

Section 1 addresses the procedure for a party to apply to the Department for relief related to disputes under ch. 102, ss. 59.88 (3), 62.624 (2), 106.25, 303.07 (7), 303.21, or 40.65, Stats., or s. 66.191, 1981 Stats., and the procedure for the responding party to file an answer to a hearing application with the Department and other party (s. DWD 80.05).

Section 2 establishes the procedure for a party to file an amended hearing application or answer (s. DWD 80.08).

Section 3 covers the attendance of witness at hearings and the procedure for requesting postponement of hearings (s. DWD 80.09).

Section 4 restricts the use of depositions at hearings (s. DWD 80.11).

Section 5 covers rules of practice at hearings, including hearsay testimony and the selection of locations where hearings will be held (s. DWD 80.12).

Section 6 establishes procedures for a party to audio record a formal hearing (s. DWD 80.13).

Section 7 provides for the production of transcripts of testimony or proceedings at formal hearings (s. DWD 80.14).

Section 8 establishes the procedure for a party to request a conference for the purpose of mediation (s. DWD 80.16).

Section 9 creates the procedure for the Department to issue licenses to appear to persons who are not licensed to practice law in Wisconsin to represent parties in worker's compensation cases (s. DWD 80.20).

Section 10 provides the procedure and requirements for the use of reports from practitioners and expert witnesses as evidence at hearings (s. DWD 80.22).

Section 11 provides for the forms, rules, and procedures for the Department to observe in processing and determining claims under s. 40.65, Stats. (s. DWD 80.31).

Section 12 covers the fees and travel reimbursement for witnesses and interpreters to attend hearings (s. DWD 80.44).

Summary of, and comparison with, existing or proposed federal regulations

There are no proposed or existing federal statutes or rules related to the emergency rule.

Summary of comments on the statement of scope and description of how the comments were taken into account in drafting the rule

A preliminary hearing on the statement of scope for the emergency rule, SS 068-25, was held on October 16, 2025. There were no comments received at the preliminary hearing or submitted in writing following the preliminary hearing.

Comparison with rules in adjacent states

Illinois. Ill. Admin. Code tit. 50, part 9030 covers procedures applicable to hearings before worker's compensation arbitrators. The Illinois procedural rules are similar to rules in Wisconsin but are more complex than the emergency rule. The Illinois rules provide for a more complex process for assigning arbitrators to cases and setting cases for hearing compared to Wisconsin. The Illinois rules provide the Illinois Rules of Evidence apply to all proceedings, except for a few limited exceptions, and for a wide use of depositions for the purpose of discovery. In Wisconsin, discovery is very limited and the rules of civil procedure do not apply to worker's compensation hearings.

Iowa. Iowa Admin. Code Rule 876-4 covers contested case procedures for worker's compensation cases. The Iowa rules are also somewhat similar to rules in Wisconsin, but are more complicated than the emergency rule. Unlike rules in Wisconsin, the Iowa rules require a filing fee of \$125 for filing a hearing request for most cases, and require the Iowa Rules of Civil Procedure to apply to worker's compensation hearings, including formal motions and discovery such as in a court of general jurisdiction. Iowa Admin. Code Rule 876-10.1 covers dispute resolution procedures after a contested case proceeding is filed in worker's compensation cases.

Michigan. Mich. Admin. Code Rule 408.34 to 408.43t are the administrative rules applicable to hearings before the worker's compensation agency. The Michigan rule is similar to rules in Wisconsin and covers filing applications for hearings, service of documents, requests for advance payments, and redemptions (full and final settlements). Mich. Admin. Code Rule 408.40b applies to appearances by the parties at mediation conferences before the worker's compensation agency.

Minnesota. Minn. Admin. Code Chapter 1420 contains the administrative rules applicable to worker's compensation litigation procedures. The Minnesota rules are similar to rules in Wisconsin but are more complex. The Minnesota rules provide for formal discovery procedures including request for admissions, depositions before hearings for purposes of discovery, other discovery available under the Minnesota Rules of Civil Procedure in certain circumstances, and for penalties that may be imposed against a party for failure to comply with discovery orders. The Minnesota rules also cover intervenors joining as parties in litigated cases. In Wisconsin, discovery is very limited, the rules of civil procedure do not apply to worker's compensation hearings and intervenors are not permitted to join cases as a party.

Summary of factual data and analytical methodologies

As part of the process for developing this emergency rule, the Department reviewed the changes to ch. 102, Stats., made by 2015 Wisconsin Act 55 and 2025 Wisconsin Act 33. The Department also reviewed the rules in ch. HA 4 and current ch. DWD 80. No other data or analysis was needed.

Development of this rule did not involve the gathering, analysis, or use of data. Therefore, s. 227.14 (2m), Stats., does not apply to this rulemaking.

Analysis and supporting documents used to determine effects on small business or in preparation of an economic impact analysis

The emergency rule does not have an economic impact on small business as defined in s. 227.114 (1), Stats., and no analysis is needed.

Fiscal Estimate

The Fiscal Estimate is attached.

Effect on small business

The emergency rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats.

Agency contact person

Questions and comments related to this rule may be directed to:

James T. O'Malley
Director, Bureau of Legal Services
Worker's Compensation Division
201 East Washington Avenue
P. O. Box 7901
Madison, WI 53707-7901
Telephone: (608) 267-6704
E-mail: Jim.OMalley@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Comments may be emailed to DWDAdminRules@dwd.wisconsin.gov or submitted to the agency contact person listed above no later than a date to be determined. The date, time and location of the public hearing will be published in the Wisconsin Administrative Register.

Text of Rule

1 **SECTION 1.** DWD 80.05 is created to read:

2 **DWD 80.05 Procedure on claim.** (1) In cases of disputes in matters coming under the
3 jurisdiction of ch. 102, ss. 40.65, 59.88 (3), 62.624 (2), 106.25, 303.07 (7), or 303.21, Stats., and
4 s. 66.191, 1981, Stats., any party to the dispute may apply to the department for relief and the
5 department shall make such order or award as shall be lawful and just under the circumstances.

(2) In all such cases under sub. (1), the party complaining shall file his or her application

with the department, along with sufficient copies of the application for service on the adverse

3 parties. The department shall thereupon serve the adverse parties with a copy of the application

4 and the adverse parties shall file an answer to the application with the department within 20 days.

5 after the service and likewise serve a copy of the answer on the party making the application.

6 The department shall thereupon notify the parties of the time and place of hearing, at least 10

7 days prior to the hearing. If no answer is mailed by the respondent within 20 days of mailing by

8 the department, the department may issue an order by default, without hearing in accordance

9 with the application, as provided by s. 102.18 (1) (a), Stats.

SECTION 2. DWD 80.08 is created to read:

DWD 80.08 Amendments. Amendment may be made to the application or answer.

letter mailed to the department prior to the date notice of hearing is mailed. Copies of the

letter shall be sent directly to the other parties. The letter shall state reasons for the amendment.

SECTION 3. DWD 80.09 is created to read:

DWD 80.09 Witness attendance; extension of time and postponement. (1) Upon

16 receipt of the notice of hearing, it is the responsibility of each party to contact any witnesses

17 necessary for that party's case and to make arrangements to have them attend the hearing.

(2) Requests for postponements and continuances shall be considered by the department.

such requests are received within a reasonable time before the date of the hearing.

20 (3) The department shall grant postponements and continuances only because of

²¹ extraordinary circumstances. Neither the scheduling problems nor the convenience of the parties

22 shall be considered extraordinary circumstances.

(4) A postponement, continuance, or extension of time may not be granted upon the agreement of the parties without the consent of the department.

3 SECTION 4. DWD 80.11 is created to read:

4 **DWD 80.11 Depositions.** Depositions may be taken and used in any hearing only in
5 accordance with s. 102.17 (1) (f), Stats. These depositions shall be taken in the same manner as
6 in courts of record. Depositions for the purpose of discovery before the hearing are specifically
7 prohibited.

8 SECTION 5. DWD 80.12 is created to read:

9 **DWD 80.12 Rules of practice; selection of hearing site.** (1) (a) The rules of practice
10 before the department shall be such as to secure the facts in as direct and simple a manner as
11 possible.

12 (b) The administrative law judge may limit testimony to only those matters which are
13 disputed.

14 (c) The administrative law judge may not allow into the record, either on direct or cross-
15 examination, redundant, irrelevant, or repetitive testimony. Hearsay testimony may be admitted
16 at the discretion of the administrative law judge provided such testimony has probative value.

17 (2) The department may select places for a hearing after considering the geographical
18 location and volume of claims in an area. The department will furnish a list of sites upon request
19 to interested parties. From this list, a hearing site shall be selected at the discretion of the
20 department. The department, in determining the site of the hearing, shall consider all of
21 the following:

22 (a) The location choice of the applicant.

(b) The location of the office of the treating practitioner or practitioner appointed by the
ment under the provisions of s. 102.13 (3) or s. 102.17, Stats.

(c) The location where the injury occurred.

SECTION 6. DWD 80.13 is created to read:

DWD 80.13 Audio recording of formal hearings. (1) (a) A party to a claim may audio record the proceedings of a formal hearing in a non-disruptive and non-obstructive manner.

(b) Witnesses, participants, and other attendees, who are not parties to the case, are not entitled to audio record the proceedings of a formal hearing.

(2) A party shall provide verbal notice of audio recording to the presiding administrative judge and all other parties in attendance at the proceedings of a formal hearing before audio recording of the hearing begins.

(3) The presiding administrative law judge shall determine if a party's audio recording is or obstructs the hearing.

(4) The presiding administrative law judge may set conditions for audio recording of a hearing to avoid disruption or obstruction of the hearing.

(5) A party's recording of the proceeding does not constitute the official record of the proceeding.

SECTION 7. DWD 80.14 is created to read:

DWD 80.14 Transcripts. Transcripts of testimony taken or proceeding had before the
ment will be furnished to the parties or their attorneys in accordance with the following
ons:

(1) After the commencement of an action to review an order of the commission in circuit
a copy of the hearing record will be furnished to the plaintiff or other parties upon

1 payment to the department of the reporter's fees set forth in s. 757.57 (5), Stats., and not as set
2 forth in s. 757.57 (2), Stats.

3 (2) Transcripts of the hearing may not be provided until after commencement of an action
4 in circuit court.

5 (3) Upon proper showing of financial inability to pay for copies of such testimony or
6 proceedings, the department in its discretion will furnish copies of the same on such terms as
7 may be agreed upon.

8 **SECTION 8.** DWD 80.16 is created to read:

9 **DWD 80.16 Mediation.** (1) A party may request the department to schedule a
10 conference to discuss a mutually agreeable resolution of a disputed case without a formal
11 hearing.

12 (2) The department may schedule a conference for purposes of mediation after a party has
13 submitted a request, and the other party or parties have confirmed in writing agreement to the
14 conference.

15 (3) A party may request a specific administrative law judge to serve as a mediator at the
16 conference. The department shall assign an administrative law judge to conduct the conference
17 based on staff resources and operational requirements.

18 (4) All written and oral communications or statements associated with a conference for
19 mediation are confidential and not subject to disclosure, except for the following:

- 20 (a) Hearing applications.
- 21 (b) Answers to applications.
- 22 (c) Reports by practitioners and expert witnesses.

(d) Payments for compensation and medical expense made by employers and worker's compensation insurance carriers.

(e) Form WKC-3 and unpaid medical bills resulting from the injury.

(f) Reimbursement claims by health insurance.

(g) Claims for family support and medical assistance under s. 102.27 (2), Stats.

(5) A party may request a conference for mediation on a form prescribed by the
ment.

SECTION 9. DWD 80.20 is created to read:

DWD 80.20 License to appear. (1) This section shall govern the issuance, suspension, revocation of licenses to appear before the department in compensation matters under the provisions of s. 102.17 (1) (c), Stats.

(2) Permission to appear at a single hearing may be issued by the department through any administrative law judge upon application evidencing qualifications provided by statute and the department's rules. Such permission may be given to appear in 3 cases before the issuing of license. When appearance has been made in 3 cases, license shall be required, which shall be issued only upon execution and filing with the department of an application upon a form prescribed by the department.

(3) A license may not be issued unless the applicant has appeared in representation of a party before the department on at least 3 formal hearings.

(4) The following conditions shall operate as grounds for refusal, suspension, or revocation of a license:

(a) Charging of excessive or unconscionable fees, misrepresentation of clients, dishonesty, fraud, sharp practice, neglect of duty, or other improper conduct in the representation

1 of a party before the department, unless satisfactorily explained or excused by the department on
2 the grounds of subsequent good conduct.

3 (b) Disbarment from the practice of law, or resignation by request of properly constituted
4 authorities, unless there has been subsequent reinstatement and continuance in good standing.

5 (c) Contumacious conduct in hearing, gross courtesy toward department
6 representatives, or failure to conform to rulings or instructions of the department or its
7 representatives.

8 (d) Intentional or repeated failure to observe provisions of the compensation act or rules
9 of procedure adopted by the department.

10 (e) Any other gross evidence of lack of good moral character, fitness or act of fraud, or
11 serious misconduct.

12 **SECTION 10.** DWD 80.22 is created to read:

13 **DWD 80.22 Use of reports from practitioners and expert witnesses as evidence. (1)**
14 In this section, "report" means a report by a practitioner or a report by an expert witness on the
15 issue of loss of earning capacity.

16 (2) Matters stated in such report which would not be competent or material evidence if
17 given as oral testimony shall not be competent or material as prima facie evidence if objection is
18 made, except as corroborated by competent and material oral testimony.

19 (3) Use of reports shall be permitted in any case in which claim for compensation is
20 made, provided the reporting practitioner or other expert witness is available for cross-
21 examination.

22 (4) A party shall be informed of the provisions of s. 102.17 (1) (d), Stats., and the
23 department's rules and also that a form for reporting will be supplied to the party upon request.

(5) Reports shall be submitted to the department upon a form prescribed by the department and shall be certified. The department may require additional or supplementary reports. Upon failure of the applicant to submit such reports within the time specified prior to the hearing, all reports previously filed may, in the discretion of the department, be excluded from consideration.

(6) Reports shall be filed with the application for adjustment of claim or as soon after as possible. Reports not filed with the department 15 days prior to the date of hearing not be acceptable as evidence except upon good cause for failure so to file, established to satisfaction of the department.

(7) Simultaneously with the filing of a report with the department, a party shall serve upon all other parties in interest. Service upon the designated representative of a party is deemed service upon the party. Service upon the insurance carrier for an employer shall be deemed service upon the employer. However, if a party does not have a representative, the party may elect to make service upon the other parties.

SECTION 11. DWD 80.31 is created to read:

DWD 80.31. Procedure and claims under s. 40.65, Stats. The department shall
e the same rules and procedures and may use the same forms in processing and
ining claims made under s. 40.65, Stats., as are used under ch. 102, Stats.

SECTION 12. DWD 80.44 is created to read:

DWD 80.44 Witness fees and travel reimbursement. The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an administrative law of the department shall be the statewide rate currently paid under s. 814.67 (1) (b), Stats., notwithstanding any local county variations.

1 **SECTION 13. EFFECTIVE DATE.** This rule shall take effect on January 1, 2026, or
2 upon publication in the state newspaper, whichever is later, and shall remain in effect for 150
3 days, as provided in s. 227.24 (1) (c), Stats., subject to extensions under s. 227.24 (2), Stats.

Signed this 16th day of December, 2025.



A handwritten signature in black ink, appearing to read "Amy Pechacek". Below the signature, the name "Amy Pechacek, Secretary-designee" is printed in a smaller, sans-serif font.

