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Scott Walker, Governor
Reginald J. Newson, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

The Wisconsin Department of Workforce Development announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 15-031
SUBJECT: Audio Recording of a Worker's Compensation Hearing
ADM. CODE REFERENCE: DWD 80.13
APPROVED BY GOVERNOR: July 10, 2015

Dated this 10th day of July, 2015.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT


Howard Bernstein, Chief Legal Counsel

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Scott Walker, Governor
Reginald J. Newson, Secretary

July 14, 2015

TO: The Honorable Mary Lazich
President, Wisconsin State Senate
Room 219 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8953
Madison, WI 53708

FROM: Reginald J. Newson, Secretary
Department of Workforce Development

SUBJECT: Audio Recording of a Worker's Compensation Hearing –
DWD ch. 80.13 (Clearinghouse Rules No. 15-031)

Introduction

The Department of Workforce Development ("DWD") is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DWD will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Rule Content

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.

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The Honorable Robin Vos
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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.

Public Hearings

DWD held one public hearing in Madison on April 28, 2015. No one attended the hearing.

DWD accepted written comments until May 1, 2015. No one submitted written comments.

DWD's Rule Changes in Response to Comments of Rules Clearinghouse, Public Hearings and Unemployment Insurance Advisory Council Comments

The Wisconsin Legislative Council Rules Clearinghouse made a number of comments on the proposed hearing draft rule. DWD implemented all of the Clearinghouse suggestions in the proposed final draft.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Environmental Impact

This rule will not have any negative environmental impact.

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..."

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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 does not have an economic impact on small businesses as defined in s. 227.114 (1), Stats., and no analysis is required.

Effect on small business

The proposed rule is primarily procedural in nature and will have no effect on small businesses.

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

1 The Wisconsin department of workforce development proposes 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.

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- 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.

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

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

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

7 **SECTION 2. EFFECTIVE DATE.** This rule takes effect on the first day of the month
8 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
9 (intro.).

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Reginald 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 <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	5. Chapter 20, Stats. Appropriations Affected No fiscal effect.
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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.

No comments were received during the public comment period on the economic impact analysis.
The department held a public hearing on April 28, 2015 in Madison and accepted written comments until May 1, 2015.
No one attended the hearing and no written comments were received.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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

Benefits - 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.

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	18. Contact Phone Number
Howard Bernstein, DWD Legal Counsel	(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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