

**D15-06**  
**Appeals Modernization**

Date: April 16, 2015 (Updated)  
Proposed by: DWD  
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**ANALYSIS OF PROPOSED UI LAW CHANGE**

**APPEALS MODERNIZATION AND EFFICIENCY IMPROVEMENTS**

**1. Description of Proposed Change**

The Unemployment Insurance (UI) appeals process can be streamlined and become more efficient if both staff and parties can take advantage of technological changes. UI laws need to be amended for this purpose.

Under current law, initial determinations regarding unemployment insurance (UI) matters are made by the department. Those determinations may be appealed to appeal tribunals, and an appeal tribunal's decision may be appealed to the Labor and Industry Review Commission (LIRC). A decision of LIRC may then be appealed to circuit court. This proposal makes a number of changes to the processes under current law for issuing and appealing decisions, determinations, and orders under the UI law, described as follows:

- a. Under current law, all testimony at UI hearings before an appeal tribunal must be taken down by a stenographer, or recorded by a recording machine. This proposal eliminates the requirement that all such testimony be taken down by a stenographer and instead requires that all such testimony be recorded by electronic means.
- b. This proposal allows for the electronic delivery of UI determinations and appeal tribunal decisions, in addition to or instead of mailing.
- c. Under current law, if a party does not appear for an appeal tribunal hearing, the appeal tribunal must hold a hearing to determine whether the failure to appear was or was not for good cause and then hold another hearing on the issues of the determination if the failure to appear was for good cause. This proposal allows the appeal tribunal to make a decision regarding good cause or no good cause for failing to appear by reviewing the written explanation from the parties without holding a hearing. This change makes the failure to appear review the same as the "reason beyond the appellant's control" review for late appeals.
- d. Under current law, UI appeals may be filed with the "department." This results in appeals being filed with various divisions, offices and entities within the "department", causing delays and misrouting of the appeals. Statutory changes to require appeals to be filed either on-line or with the specific appeal tribunal will avoid confusion, misrouting of appeals and delays in processing the appeals. The same change is made for appeals to LIRC; appeals to LIRC are to be filed either on-line or with the LIRC office.
- e. In regards to appeals involving the liability of employing units, a statutory change to expressly provide that the department must be a party to proceedings before the appeal tribunal.

**D15-06**  
**Appeals Modernization**

**2. Proposed Statutory Language**

***TO AMEND***

**108.09 (2) (a)** The department shall promptly issue a computation setting forth the employee's potential benefit rights based on reports filed by an employer or employers under s. 108.205, or on the employee's statement and any other information then available. The results of the computation, a recomputation, or pertinent portion of either, shall be delivered electronically to, or mailed to the last-known address of, each party. The department may recompute an employee's potential benefit rights at any time on the basis of subsequent information or to correct a mistake, including an error of law, except that a party's failure to make specific written objection, received by the department within 14 days after the above delivery or mailing, as to a computation or recomputation is a waiver by such party of any objection thereto. Any objections to a computation which are not satisfactorily resolved by recomputation shall be resolved by a determination under par. (b).

**108.09 (2) (d)** A copy of each determination shall be delivered electronically to, or mailed to the last-known address of, each of the parties party, except that a party's copy of any determination may be given to such party instead of being electronically delivered or mailed.

**108.09 (2r) HEARING REQUEST.** Any party to a determination may request a hearing as to any matter in that determination if such request is made in accordance with procedure prescribed by the department and is received by the appeal tribunal or postmarked within 14 days after a copy of the determination was delivered electronically, mailed, or given to such party, whichever first occurs.

D15-06  
Appeals Modernization

108.09 (4) (d) *Appellant's failure to appear*. 1. If the appellant fails to appear at a hearing held under this section and due notice of the hearing was electronically delivered or mailed to the appellant's last-known address, the appeal tribunal shall issue a decision dismissing the request for hearing unless subd. 2. applies.

2. If the appellant delivers or transmits a written explanation for failing to appear at a hearing to the department which is received before a decision under subd. 1. is electronically delivered or mailed under subd. 1., ~~an appeal tribunal shall review the~~, ~~the department may so notify each party and schedule a hearing concerning whether there was good cause for the appellant's explanation of the failure to appear.~~ ~~The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony,~~ If the appeal tribunal finds that the appellant's explanation for failing to appear, when taken as true and construed most favorably to the appellant, does not establish good cause for the failure to appear, ~~the appeal tribunal shall issue a~~ may dismiss the appeal without a hearing and acknowledge receipt of the explanation in its decision containing this finding and dismissing the appeal. ~~If, after hearing testimony, the appeal tribunal finds that the appellant's~~ If that explanation, when taken as true and construed most favorably to the appellant, establishes good cause for the failure to appear, the appeal tribunal shall may issue a decision containing this finding without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination.

3. ~~If the appellant delivers or transmits a written explanation for nonappearance to the department which is received within 21 days after a decision under subd. 1. is mailed, the appeal tribunal may set aside the decision dismissing the appeal and the department may schedule a~~

**D15-06**  
**Appeals Modernization**

~~hearing concerning whether there was good cause for the appellant's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and reinstating the dismissal. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation establishes good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding.~~

**108.09 (4)(e) Respondent's failure to appear. 1.** If the respondent fails to appear at a hearing held under this section but the appellant is present, and due notice of the hearing was electronically delivered or mailed to the respondent's last-known address, the appeal tribunal shall hold the hearing and shall issue a decision under sub. (3) (b) unless subd. 2. applies.

**2.** If the respondent delivers or transmits a written explanation for failing to appear at the hearing to the appeal tribunal which is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent delivers or transmits a written explanation for nonappearance to the appeal tribunal which is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation of the failure to appear at the hearing. If the appeal tribunal finds that the respondent's explanation does not establish good cause for the failure to appear the appeal tribunal may issue a decision containing this finding without a hearing. ~~the department may so notify each party and may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing for~~

**D15-06**  
**Appeals Modernization**

~~further testimony concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear. If, after hearing testimony, the appeal tribunal finds that the respondent's~~ If the respondent establishes good cause for failing to appear, the appeal tribunal shall ~~may~~ issue a decision containing this finding ~~without a hearing.~~ The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a ~~2nd~~ hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision

3. If the respondent delivers or transmits a written explanation for failing to appear at the hearing to the appeal tribunal which is received within 21 days after a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent no further action concerning the explanation will be taken at that time. If the respondent delivers or transmits a written explanation for failing to appear at the hearing to the appeal tribunal which is received within 21 days after a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation of the failure to appear. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear the appeal tribunal may issue a decision containing this finding ~~without a hearing.~~ If the respondent establishes good cause for failing to

**D15-06**  
**Appeals Modernization**

~~appear, the appeal tribunal may issue a decision containing this finding without a hearing. The appeal tribunal may set aside the original decision and the department may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If the original decision is not set aside, the appeal tribunal may on its own motion amend or set aside that decision within 21 days after the decision concerning whether there was good cause for the respondent's failure to appear under subd. 1. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and, if necessary, reinstating the decision which was set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance, the same or another appeal tribunal established by the department for this purpose shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a 2<sup>nd</sup> hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.~~

**108.09 (4) (f) 1.** Except as provided in par. (e) 3., within 21 days after its decision was electronically delivered or mailed to the parties, the appeal tribunal may, on its own motion, amend or set aside its decision and may thereafter make new findings and issue a decision on the basis of evidence previously submitted in such case, or the same or another appeal tribunal may make new findings and issue a decision after taking additional testimony.

**D15-06**  
**Appeals Modernization**

**108.09 (4) (f) 2. (intro.)** Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the commission, the appeal tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at any time if the appeal tribunal finds that:

**108.09 (4) (f) 3.** Unless a party or the department has filed a timely petition for review of the appeal tribunal decision by the commission, the appeal tribunal may, within 2 years after the date of the decision, reopen its decision if it has reason to believe that a party offered false evidence or a witness gave false testimony on an issue material to its decision. Thereafter, and after receiving additional evidence or taking additional testimony, the same or another appeal tribunal may set aside its original decision, make new findings and issue a decision.

**108.09 (5) (b)** All testimony at any hearing under this section shall be ~~taken down by a stenographer, or recorded by a recording machine~~ electronic means, but need not be transcribed unless either of the parties requests a transcript prior to expiration of that party's right to further appeal under this section and pays a fee to the commission in advance, the amount of which shall be established by rule of the commission . When a transcript is thus furnished to one of the parties upon request, a copy of the transcript shall be furnished ~~the~~ to all other party parties free of charge. The transcript fee thus collected shall be paid to the administrative account.

**108.09 (5) (d)** In its review of the decision of an appeal tribunal, the commission shall use the electronic recording of the hearing or a written synopsis of the testimony, and other evidence taken at ~~a the hearing, or a transcript of the hearing prepared, under the direction of the department or commission, by an employee of the department, an employee of the commission or a contractor.~~ If a party shows to the commission that a synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken, the commission shall direct the preparation of a transcript. ~~If a transcript is prepared, the transcript~~

**D15-06**  
**Appeals Modernization**

~~shall indicate the transcriber's name and whether the transcriber is an employee of the department, an employee of the commission, or a contractor.~~

**108.09 (6) (a)** The department or any party may petition the commission for review of an appeal tribunal decision, pursuant to ~~commission rules~~ promulgated by the commission, if such petition is received by the ~~department or commission~~ or postmarked within 21 days after the appeal tribunal decision was electronically delivered to the party or mailed to the party's last-known address. The commission shall dismiss any petition if not timely filed unless the petitioner shows good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner. If the petition is not dismissed, the commission may take action under par. (d).

**108.09 (6) (b)** Within 28 days after a decision of the commission is electronically delivered or mailed to the parties, the commission may, on its own motion, set aside the decision for further consideration and take action under par. (d).

**108.09 (6) (d)** In any case before the commission for action under this subsection, the commission may affirm, reverse, modify, or set aside the decision on the basis of the evidence previously submitted, ~~may~~ order the taking of additional evidence as to such matters as it may direct, ~~or it may~~ or remand the matter to the department for further proceedings.

**108.095 (2)** The department shall investigate whether any person has obtained benefits that were payable to another person by means of any false statement or representation, and may issue an initial determination concerning its findings. The department shall electronically deliver a copy of the determination to, or mail a copy of the determination to the last-known address of, each part affected thereby. Unless designated by a determination under this section, an



**D15-06**  
**Appeals Modernization**

employing unit is not a party to the determination. The department may set aside or amend the determination at any time prior to a hearing concerning the determination under sub. (5) on the basis of subsequent information or to correct a mistake, including an error of law.

**108.095 (3)** Any party to a determination may appeal that determination by requesting a hearing concerning any matter in that determination if the request is received by the appeal tribunal or postmarked within 14 days after the electronic delivery or mailing.

**108.095 (7)** Any party may commence an action for judicial review of a decision of the commission under this section, after exhausting the remedies provided under this section, by commencing the action within 30 days after the decision of the commission is delivered electronically to, or mailed to the department and the last-known address of, each other party. The scope and manner of judicial review is the same as that provided in s. 108.09 (7).

**108.10 (1)** The department shall investigate the status, and the existence and extent of liability of an employing unit, and may issue an initial determination accordingly. The department may set aside or amend the determination at any time prior to a hearing on the determination on the basis of subsequent information or to correct a mistake, including an error of law. The department shall electronically deliver a copy of each determination to, or mail a copy of each determination to the last-known address of, the employing unit affected thereby. The employing unit may request a hearing as to any matter in that determination if the request is received by the department or postmarked within 21 days after the electronic delivery or mailing and in accordance with such procedure as the department prescribes by rule.

**108.10 (2)** Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such tribunal. The department may be a party in any proceedings before an appeal

**D15-06**  
**Appeals Modernization**

tribunal under this section. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

**108.10 (4)** The department or the employing unit may commence action for the judicial review of a commission decision under this section, provided the department, or the employing unit, after exhausting the remedies provided under this section, has commenced such action within 30 days after such the commission's decision was delivered electronically to the employing unit or mailed to the employing unit's last-known address. The scope of the judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In an action commenced by an employing unit under this section, the department shall be ~~an adverse party~~ a defendant under s. 102.23(1)(a) and shall be named as a party in the complaint commencing the action.

**108.10 (6)** Any determination by the department or any decision by an appeal tribunal or by the commission is conclusive with respect to an employing unit unless ~~it~~ the department or the employing unit files a timely request for a hearing or petition for review as provided in this section. A determination or decision is binding upon the department only insofar as the relevant facts were included in the record ~~which~~ that was before the department at the time the determination was issued, or before the appeal tribunal or commission at the time the decision was issued.

**TO REPEAL 108.09 (2) (cm)**

~~(cm) Unless a party has filed a timely request for review of the decision of an appeal tribunal by the commission or has commenced a timely action for the judicial review of the decision of the commission, the department may set aside or amend any appeal tribunal decision adverse to a claimant that has been issued under s. 108.09, 1995 stats., within the 4-year period immediately~~

**D15-06**  
**Appeals Modernization**

~~preceding January 4, 1998, or may reverse, modify or set aside any decision of the commission adverse to a claimant that has been issued under s. 108.09, 1995 stats., within the 4 year period immediately preceding January 4, 1998, if the department finds that the benefits paid or payable to the claimant have been affected by wages earned by the claimant which have not been paid, and the department is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.~~

**3. Proposer's Reason for the Change**

These changes will increase customer service and satisfaction and streamline the appeals processes.

**4. Effects of Proposed Changes**

- a. Policy. This proposal improves operational efficiencies for the UI division and allows consumers to communicate more efficiently with the department. This proposal continues to utilize traditional mail communications, but allows the department to begin to migrate towards electronic forms of communication with consumers who choose to utilize the improved system.
- b. Administrative Impact. This proposal allows the department to move towards electronic forms of communication in handling appeals for consumers who choose to utilize the improved system.
- c. Fiscal. The changes in this proposal are technical in nature and will not have an impact on the UI Trust Fund. Since these changes are not mandating modernization efforts, there is no expected IT impact. It is anticipated the proposals related to determining "good cause" without holding a hearing and directly filing appeals with the appeal tribunal will incur a one-time administrative impact of 12 hours (\$571) to update the website and forms and an additional two hours (\$166) for changing mainframe form variable data. The total one-time cost estimate is \$737.

**5. State and Federal Issues**

There is no known state or federal issues relating to this proposal.

**6. Proposed Effective/Applicability Date**

This proposal would be effective with the other proposals contained in the next agreed cycle bill.

**Proposal  
UI Appeals Modernization (D15-06)**

Date: April 16, 2015  
Prepared by: Technical Services Section

**FISCAL ANALYSIS OF PROPOSED LAW CHANGE**

**Impact:**

This proposal is not expected to impact the UI Trust Fund.

There is no expected IT impact. Administrative one-time costs are estimated at 14 hours or \$737.

**Summary of the Proposal:**

The majority of the law change is intended to give the UI division authority to move forward with modernization. Changes in the law text needed for future modernization efforts include updated language on electronic notifications, and electronic signatures on determinations.

There are two segments of the proposed law change that would lead to immediate action by the department. The first proposal allows administrative law judges to make good cause determinations for appellants failing to appear at a hearing without holding a hearing. The second proposal changes and simplifies the appeals process informing appellants that appeals are to be filed directly with the Appeal Tribunal or LIRC in lieu of the current language which states "with the department".

**Methodology:**

These proposed law changes do not mandate modernization efforts. Making technical law text changes to allow for electronic notifications, and electronic signatures, will not impact the UI Trust Fund. While reviewing "good cause" without the need for a hearing and filing directly with the Appeal Tribunal or LIRC may streamline the appeals filing process and provide better customer service, there is no impact to the UI Trust Fund.

**IT/Administrative Impact:**

Affected business areas representatives were given a summary of the proposed law changes. Each area developed a cost estimate which includes IT, web/form updates, and any procedural development and training. Since these technical law text changes do not mandate modernization efforts, there is no expected IT impact. The law change proposals to make a "good cause" determination without another hearing and appeals to be filed directly with the Appeal Tribunal or LIRC are expected to have a one-time web/forms administrative impact of 12 hours or \$571. There is an additional 2 hours of BITS time or \$166 for changing mainframe form variable data. The total one-time cost is estimated at \$737. There is no expected procedural development or training costs. These efforts may result in ongoing savings of time to apply to higher value added tasks.