

Transfer Circuit Court Review Statutes to Chapter 108

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Proposed by: DWD
Prepared by: Andy Rubsam

**ANALYSIS OF PROPOSED UI LAW CHANGE
Transfer Circuit Court Review Statutes to Chapter 108**

1. Description of Proposed Change

Currently, Wis. Stat. § 102.23, a worker's compensation statute, contains the procedures for actions for judicial review of the decisions of the Labor and Industry Review Commission. The unemployment insurance statutes incorporate those provisions by reference. Wis. Stat. § 108.09(7)(a). Some portions of § 102.23 relate only to worker's compensation appeals to circuit court. The Department proposes to amend the unemployment insurance statutes to include the judicial review provisions of § 102.23 and to change some of those provisions.

The Commission has taken the position that the Department may not file an action for judicial review of a Commission decision unless the Department participated in the proceedings at the Commission. Current § 108.09(7)(a) states that the department may file an action for judicial review and does not require that the Department participate in proceedings at the Commission. This change clarifies that the Department need not participate in proceedings before the Commission in order to appeal the Commission's order.

Currently, there is no deadline for the Commission to transmit the record of proceedings to the circuit court in a judicial review action. Under this proposal, the Commission must transmit the record to the circuit court within sixty days of filing its answer to the complaint for judicial review. This change is designed to prevent delays in the judicial review process.

This proposal also provides for certain changes to the venue provisions of judicial review actions. Under § 102.23, an action for judicial review of a Commission decision must be filed in the county in which the plaintiff resides, unless the plaintiff is the Department. If the

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Department files the action for judicial review, the case must be filed in the county of the defendant's residence. Under current § 102.23, the case may be filed in any county if all of the parties and the court agree. The proposed change provides that if, after notice to the parties who have answered the complaint or otherwise appeared and a hearing, the court may order that the case may proceed to decision on the merits in that county. This change gives courts more discretion regarding venue issues, which is similar to the law regarding other circuit court actions.

The Department always appears as a party in judicial appeals of unemployment insurance tax cases that the Commission decided. The Department may, but is not required, to be a party to unemployment insurance benefit appeals of Commission decisions. The Department proposes that it always be a party in all unemployment insurance appeals to court, which would ensure that the Department always has the opportunity to defend its position in judicial review cases.

2. Proposed Statutory Change

108.09 (7) of the statutes is repealed and recreated to read:¹

108.09 (7) JUDICIAL REVIEW.

- (a) ~~The department or either~~ Any party may commence an action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section. The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to exhaust the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required by this subsection, the court shall dismiss the action. if the party or the department has commenced such action in

¹ Strikethrough and underline portions reflect only proposed changes to the current 108.09(7).

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~~accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party's last known address.~~

- (b) Any judicial review under this chapter shall be confined to questions of law and shall be in accordance with this subsection, ~~and the provisions of ch. 102 with respect to judicial review of orders and awards shall likewise apply to any decision of the commission reviewed under this section.~~ In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been designated by it for this purpose, or at the commission's request, by the department of justice. In any such judicial action, the department may appear by any licensed attorney who is a salaried employee of the department and has been designated by it for this purpose.

(c) ²

1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the commission, any party or the department may, by serving a complaint as provided in subdivision 3. and filing the summons and complaint with the clerk of the circuit court, commence an action against the commission for judicial review of the order. In an action for judicial review of a commission order, every other party to the proceedings before the commission shall be made a defendant. The department shall also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.
2. Except as provided in this subdivision, the proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the department, the proceedings shall be in the circuit court of the county where a defendant, other than the commission, resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after

² Compare the proposed section 108.09(7)(c) to current section 102.23(1)(a).

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notice and a hearing, orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.

3. In such an action, a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon the commission or agent authorized by the commission to accept service constitutes complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.
 4. Each defendant shall serve its answer within 20 days after the service of the complaint, which answer may, by way of counterclaim or cross-complaint, ask for the review of the order referred to in the complaint, with the same effect as if the defendant had commenced a separate action for the review of the order.
 5. Within 60 days of appearing in an action for judicial review, the commission shall make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the commission's order and findings. Such return of the commission, when filed in the office of the clerk of the circuit court, shall constitute a judgment roll in the action, and it shall not be necessary to have a transcript approved. After the Commission makes return of the judgment roll to the court, the court shall schedule briefing by the parties. Any party may request oral argument before the court; subject to the provisions of law for a change of the place of trial or the calling in of another judge.
 6. The court may confirm or set aside the Commission's order, but may set aside the order only upon any of the following grounds:
 - a. That the commission acted without or in excess of its powers.
 - b. That the order was procured by fraud.
 - c. That the findings of fact by the commission do not support the order.
- (d) The court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that a party was damaged by that irregularity or

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error.³ ~~Notwithstanding ss. 102.26 (1) and 814.245, upon review of a decision of the commission under this chapter, costs as between the parties shall be in the discretion of the court, but no costs may be taxed against the department.~~

- (e) The record in any case shall be transmitted to the commission within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.⁴
- (f) If the commission's order depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.⁵
- (g) Any party aggrieved by a judgment entered upon the review of any circuit court order under this subsection may appeal as provided in ch. 808.⁶
- (h) The clerk of any court rendering a decision affecting a decision of the commission shall promptly furnish all parties a copy of such decision without charge.⁷
- (i) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and certified transcripts of judgments. In proceedings to review an order, costs as between the parties shall be in the discretion of the court. Notwithstanding s. 814.245, no costs may be taxed against the commission or the department.⁸

108.09 (4o) of the statutes is amended to read:

DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing before an appeal tribunal under this section, a departmental record relating to a claim for benefits, other than a report specified in sub. (4m), constitutes prima facie evidence, and shall be

³ Compare the proposed section 108.09(7)(d) to current section 102.23(2).

⁴ Compare the proposed section 108.09(7)(e) to current section 102.23(3).

⁵ Compare the proposed section 108.09(7)(f) to current section 102.23(6).

⁶ Compare the proposed section 108.09(7)(g) to current section 102.25(1).

⁷ Compare the proposed section 108.09(7)(h) to current section 102.25(2).

⁸ Compare the proposed section 108.09(7)(i) to current section 102.26(1).

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admissible to prove, that an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of the claim, notwithstanding that the record or a statement contained in the record may be uncorroborated hearsay and may constitute the sole basis upon which issue of the employer's failure is decided, if the parties appearing at the hearing have been given an opportunity to review the record at or before the hearing and to rebut the information contained in the record. A record of the department that is admissible under this subsection shall be regarded as self-authenticating and shall require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness in the record. If such a record is admitted and made the basis of a decision, the record may constitute substantial evidence under sub. (7)(f) s. 102.23 (6). For purposes of this subsection, "departmental record" means a memorandum, report, record, document, or data compilation that has been made or maintained by employees of the department in the regular course of the department's fact-finding investigation of a benefit claim, is contained in the department's paper or electronic files of the benefit claim, and relates to the department's investigative inquiries to an employer or statements or other matters submitted by the employer or its agent in connection with the fact-finding investigation of a benefit claim. A departmental record may not be admitted into evidence under this subsection or otherwise used under this subsection for any purpose other than to prove whether an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of a claim.

108.10 (4) of the statutes is amended to read:

The ~~department or the~~ employing unit may commence an action for the judicial review of a commission decision under this section, provided ~~the department, or the~~ employing unit has, ~~after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last known address.~~ The department may commence an action for the judicial review of a commission decision under this section, but the department is not required to have been a party to the proceedings before the commission or to exhaust the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required by s. 108.09

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(7), the court shall dismiss the action. The scope of 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 under s. 102.23 (1) (a) and shall be named as a party in the complaint commencing the action.~~

3. Effects of Proposed Change

- a. Policy. This proposal transfers the judicial review statute into chapter 108 so that it will be unnecessary for litigants and the courts to cross-reference the worker's compensation statutes. The proposal will more clearly separate provisions that relate to workers compensation cases from those that relate to unemployment insurance cases. The proposal also clarifies and simplifies certain procedural aspects of judicial review.
- b. Administrative. The administrative effect of this proposal on the Department and the Commission is expected to be minimal. The Commission will be required to transmit the hearing record to the circuit court within sixty days, which is not expected to be burdensome.
- c. Fiscal. A fiscal estimate is not yet available. It is anticipated that this proposal will have a negligible fiscal effect.

4. State and Federal Issues

There are no known federal conformity issues with revising the circuit court review statutes. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

5. Proposed Effective/Applicability Date

This proposal would be effective with other changes made as part of the agreed bill cycle.

NOTE: Sub. (2) is shown as amended eff. 1-1-16 by 2015 Wis. Act 55. Prior to 1-1-16 it reads:

(2) If the sum ordered by the department to be paid is not paid when due, that sum shall bear interest at the rate of 10% per year. The state is liable for such interest on awards issued against it under this chapter. The department has jurisdiction to issue award for payment of such interest at any time within one year of the date of its order, or upon appeal after final court determination. Such interest becomes due from the date the examiner's order becomes final or from the date of a decision by the labor and industry review commission, whichever is later.

(3) If upon petition for review the commission affirms an examiner's order, interest at the rate of 7% per year on the amount ordered by the examiner shall be due for the period beginning on the 21st day after the date of the examiner's order and ending on the date paid under the commission's decision. If upon petition for judicial review under s. 102.23 the court affirms the commission's decision, interest at the rate of 7% per year on the amount ordered by the examiner shall be due up to the date of the commission's decision, and thereafter interest shall be computed under sub. (2).

History: 1977 c. 195; 1979 c. 110 s. 60 (13); 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1993 a. 81; 2015 a. 55.

The department can assess the penalty for inexcusable delay in making payments prior to the entry of an order. The question of inexcusable delay is one of law and the courts are not bound by the department's finding as to it. Milwaukee County v. DILHR, 48 Wis. 2d 392, 180 N.W.2d 513 (1970).

The penalty under sub. (1) does not bar an action for bad faith for failure to pay a claim. Coleman v. American Universal Insurance Co. 86 Wis. 2d 615, 273 N.W.2d 220 (1979).

LIRC's application of sub. (1) was entitled to great weight deference. Beverly Enterprises v. LIRC, 2002 WI App 23, 250 Wis. 2d 246, 640 N.W.2d 518, 01-0970.

102.23 Judicial review. (1) (a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on the order or award or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. Within 30 days after the date of an order or award made by the commission either originally or after the filing of a petition for review with the department, the division, or the commission under s. 102.18 any party aggrieved by the order or award may by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, the circuit court may extend the time in which an action may be commenced by an additional 30 days. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

NOTE: Par. (a) is shown as amended eff. 1-1-16 by 2015 Wis. Act 55. Prior to 1-1-16 it reads:

(a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. Within 30 days after the date of an order or award made by the commission either originally or after the filing of a petition for review with the department under s. 102.18 any party aggrieved thereby may by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, it may extend the time in which an action may be commenced by an additional 30 days. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon a commissioner or agent authorized by the commission to accept service constitutes complete service on all parties,

but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission shall mail one copy to each other defendant.

(c) Except as provided in par. (cm), the commission shall serve its answer within 20 days after the service of the complaint, and, within the like time, the adverse party may serve an answer to the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the party had commenced a separate action for the review thereof.

(cm) If an adverse party to the proceeding brought under par. (a) is an insurance company, the insurance company may serve an answer to the complaint within 45 days after the service of the complaint.

(d) The commission shall make return to the court of all documents and papers on file in the matter, all testimony that has been taken, and the commission's order, findings, and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers specified in s. 809.15, constitute a judgment roll in the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before the court upon the record by any party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(e) Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the commission acted without or in excess of its powers.
2. That the order or award was procured by fraud.
3. That the findings of fact by the commission do not support the order or award.

(2) Upon the trial of an action for review of an order or award the court shall disregard any irregularity or error of the commission, the department, or the division unless it is made to affirmatively appear that the plaintiff was damaged by that irregularity or error.

NOTE: Sub. (2) is shown as amended eff. 1-1-16 by 2015 Wis. Act 55. Prior to 1-1-16 it reads:

(2) Upon the trial of any such action the court shall disregard any irregularity or error of the commission or the department unless it is made to affirmatively appear that the plaintiff was damaged thereby.

(3) The record in any case shall be transmitted to the department or the division within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from that order or judgment.

NOTE: Sub. (3) is shown as amended eff. 1-1-16 by 2015 Wis. Act 55. Prior to 1-1-16 it reads:

(3) The record in any case shall be transmitted to the department within 5 days after expiration of the time for appeal from the order or judgment of the court, unless appeal shall be taken from such order or judgment.

(4) Whenever an award is made against the state the attorney general may bring an action for review thereof in the same manner and upon the same grounds as are provided by sub. (1).

(5) When an action for review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, the division, the commission, or a court to pay compensation is not relieved from paying compensation as ordered.

NOTE: Sub. (5) is shown as amended eff. 1-1-16 by 2015 Wis. Act 55. Prior to 1-1-16 it reads:

(5) When an action for review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, the commission, or a court to pay compensation is not relieved from paying compensation as ordered.

(6) If the commission's order or award depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of

the evidence on any finding of fact. The court may, however, set aside the commission's order or award and remand the case to the commission if the commission's order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

History: 1973 c. 150; 1975 c. 199; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 29; 1977 c. 187 ss. 59, 135; 1977 c. 195, 272, 447; Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 278; 1981 c. 390 s. 252; 1983 a. 98, 122, 538; 1985 a. 83; 1997 a. 187; 2001 a. 37; 2005 a. 172, 442; 2015 a. 55.

Judicial Council Committee's Note, 1976: The procedure for initiating a petition for judicial review under ch. 102 is governed by the provisions of s. 102.23 rather than the provisions for initiating a civil action under s. 801.02. [Re Order effective Jan. 1, 1977]

The fact that a party appealing from a DILHR order as to unemployment compensation labeled his petition "under 227.15" [now 227.52], is immaterial since the circuit court had subject matter jurisdiction. An answer by the department that s. 227.15 [now 227.52] gave no jurisdiction amounted to an appearance, and the department could not later claim that the court had no personal jurisdiction because the appellant had not served a summons and complaint. *Lees v. DILHR*, 49 Wis. 2d 491, 182 N.W.2d 245 (1971).

A finding of fact, whether ultimate or evidentiary, is still in its essential nature a fact, whereas a conclusion of law accepts those facts, and by judicial reasoning results from the application of rules or concepts of law to those facts whether undisputed or not. *Kress Packing Co. v. Kottwitz*, 61 Wis. 2d 175, 212 N.W.2d 97 (1973).

A challenge to the constitutionality of sub. (1) was not sustained since it is manifest from the statute that the legislature intended to have the department be the real party in interest and not a mere nominal party. *Hunter v. DILHR*, 64 Wis. 2d 97, 218 N.W.2d 314 (1974).

When the claimant timely appealed an adverse worker's compensation decision in good faith, but erroneously captioned the appeal, the trial court abused its discretion by dismissing the action. *Cruz v. DILHR*, 81 Wis. 2d 442, 260 N.W.2d 692 (1978).

An employer whose unemployment compensation account is not affected by the commission's determination has no standing to seek judicial review. *Cornwell Personnel Associates v. DILHR*, 92 Wis. 2d 53, 284 N.W.2d 706 (Ct. App. 1979).

An agency's mixed conclusions of law and findings of fact may be analyzed by using 2 methods: 1) the analytical method of separating law from fact; or 2) the practical or policy method that avoids law and fact labels and searches for a rational basis for the agency's decision. *United Way of Greater Milwaukee v. DILHR*, 105 Wis. 2d 447, 313 N.W.2d 858 (Ct. App. 1981).

A failure to properly serve the commission pursuant to sub. (1) (b) results in a jurisdictional defect rather than a mere technical error. *Gomez v. LIRC*, 153 Wis. 2d 686, 451 N.W.2d 475 (Ct. App. 1989).

Discretionary reversal is not applicable to judicial review of LIRC orders under ch. 102. There is no power to reopen a matter that has been fully determined under ch. 102. *Kwaterski v. LIRC*, 158 Wis. 2d 112, 462 N.W.2d 534 (Ct. App. 1990).

A LIRC decision is to be upheld unless it directly contravenes the words of the statute, is clearly contrary to legislative intent, or is otherwise without a rational basis. *Wisconsin Electric Power Co. v. LIRC*, 226 Wis. 2d 778, 595 N.W.2d 23 (1999), 97–2747.

An appeal under s. 102.16 (2m) (e) of a department determination may be served under sub. (1) (b) on the commission or the commission. *McDonough v. Department of Workforce Development*, 227 Wis. 2d 271, 595 N.W.2d 686 (1999), 97–3711.

Under sub. (1) (a), judicial review is available only from an order or award granting or denying compensation. Judicial review by common law certiorari was not available for a claim that LIRC failed to act within the statutory time limitations under s. 102.18 (4), which would be subject to judicial review of any subsequent order or award granting or denying compensation in that case. *Vidal v. LIRC*, 2002 WI 72, 253 Wis. 2d 426, 645 N.W.2d 870, 00–3548.

The plaintiff complied with the requirement of sub. (1) that every adverse party be made a defendant by naming the defendant's insurer in the caption of the summons and complaint, which were timely filed and served even though the insurer was not mentioned in the complaint's body. *Selaide v. Columbia Hospital*, 2002 WI App 99, 253 Wis. 2d 553, 644 N.W.2d 690, 01–2046.

Sub. (5) requires an employer to make payment to a disabled employee pending appeal of a date of injury defense in an occupational disease case when the employer's liability is not disputed on appeal and the only question is who will pay benefits. *Bosco v. LIRC*, 2004 WI 77, 272 Wis. 2d 586, 681 N.W.2d 157, 03–0662.

Because s. 102.18 (1) (bp) specifically allows for the imposition of bad faith penalties on an employer for failure to pay benefits and because sub. (5) specifically directs the employer to pay benefits pending an appeal when the only issue is who will pay benefits, an employer may be subject to bad faith penalties under s. 102.18 (1) (bp), independent from its insurer, when it fails to pay benefits in accordance with sub. (5). *Bosco v. LIRC*, 2004 WI 77, 272 Wis. 2d 586, 681 N.W.2d 157, 03–0662.

Under *Miller* an "adverse party" for worker's compensation actions in circuit court includes any party bound by the Commission's order or award granting or denying compensation to the claimant. The interests of an adverse party need not necessarily be adverse to the party filing a circuit court action. *Xcel Energy Services, Inc. v. LIRC*, 2012 WI App 19, 339 Wis. 2d 413, 810 N.W.2d 865, 11–0203.

Default judgment is unavailable to plaintiffs under this section when the employer has timely answered. *Ellis v. Department of Administration*, 2011 WI App 67, 333 Wis. 2d 228, 800 N.W.2d 6, 10–1374.

Failure to name an adverse party as a defendant under sub. (1) (a) deprives the circuit court of competency and requires dismissal of the complaint. "Adverse party" includes every party whose interest in relation to the judgment or decree appealed from is in conflict with the modification or reversal sought by the action for judicial review. *Xcel Energy Services, Inc. v. LIRC*, 2013 WI 64, 349 Wis. 2d 234, 833 N.W.2d 665, 11–0203.

Judicial review of workmen's compensation cases. *Haferman*, 1973 WLR 576.

102.24 Remanding record. (1) Upon the setting aside of any order or award, the court may recommit the controversy and

remand the record in the case to the commission for further hearing or proceedings, or it may enter the proper judgment upon the findings of the commission, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk of circuit court upon the judgment and lien docket entry of any judgment which may have been rendered upon the order or award. Transcripts of the abstract may be obtained for like entry upon the judgment and lien dockets of the courts of other counties.

(2) After the commencement of an action to review any order or award of the commission, the parties may have the record remanded by the court for such time and under such condition as the parties may provide, for the purpose of having the department or the division act upon the question of approving or disapproving any settlement or compromise that the parties may desire to have so approved. If approved, the action shall be at an end and judgment may be entered upon the approval as upon an award. If not approved, the department or the division shall immediately return the record to the circuit court and the action shall proceed as if no remand had been made.

NOTE: Sub. (2) is shown as amended eff. 1–1–16 by 2015 Wis. Act 55. Prior to 1–1–16 it reads:

(2) After the commencement of an action to review any award of the commission the parties may have the record remanded by the court for such time and under such condition as they may provide, for the purpose of having the department act upon the question of approving or disapproving any settlement or compromise that the parties may desire to have so approved. If approved the action shall be at an end and judgment may be entered upon the approval as upon an award. If not approved the record shall forthwith be returned to the circuit court and the action shall proceed as if no remand had been made.

History: 1975 c. 147; 1977 c. 29; 1979 c. 278; 1995 a. 224; 2015 a. 55.

102.25 Appeal from judgment on award. (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal the judgment within the period specified in s. 808.04 (1). A trial court may not require the commission or any party to the action to execute, serve, or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the tape of the recording machine. The state is a party aggrieved under this subsection if a judgment is entered upon the review confirming any order or award against the state. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department or the division in the same manner and for the same purposes as provided for remanding from the circuit court to the department or the division under s. 102.24 (2).

NOTE: Sub. (1) is shown as amended eff. 1–1–16 by 2015 Wis. Act 55. Prior to 1–1–16 it reads:

(1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal therefrom within the time period specified in s. 808.04 (1). A trial court shall not require the commission or any party to the action to execute, serve or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the tape of the recording machine. The state is a party aggrieved under this subsection if a judgment is entered upon the review confirming any order or award against it. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department in the same manner and for the same purposes as provided for remanding from the circuit court to the department under s. 102.24 (2).

(2) It shall be the duty of the clerk of any court rendering a decision affecting an award of the commission to promptly furnish the commission with a copy of such decision without charge.

History: 1971 c. 148; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1977 c. 29, 187, 195, 418; 1979 c. 278; 1983 a. 219; 2015 a. 55.

Judicial Council Note, 1983: Sub. (1) is amended to replace the appeal deadline of 30 days after service of notice of entry of judgment or award by the standard time specified in s. 808.04 (1), *stats.*, for greater uniformity. The subsection is further amended to eliminate the superfluous provisions for calendaring and hearing the appeal. [Bill 151–S]

A court order setting aside an administrative order and remanding the case to the administrative agency disposed of the entire matter in litigation and was appealable as of right. *Bearns v. DILHR*, 102 Wis. 2d 70, 306 N.W.2d 22 (1981).

102.26 Fees and costs. (1) No fees may be charged by the clerk of any circuit court for the performance of any service required by this chapter, except for the entry of judgments and cer-