

Chapter ERC 92

FILING APPEALS

ERC 92.01 Time limits and address for filing appeals.
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Note: Chapter PC 3 was renumbered Chapter ERC 92 under s. 13.92 (4) (b) 1., Stats., Register December 2014 No. 708.

ERC 92.01 Time limits and address for filing appeals. All appeals shall be filed according to the appropriate time limits established by statute or rule and shall be filed at the office of the commission. The time limit for filing any appeals with the commission pursuant to s. 230.45 (1) (d), Stats., shall be 30 days after the effective date of the action, or 30 days after the appellant is notified of the action, whichever is later.

Note: The mailing address of the commission is:
 Wisconsin Employment Relations Commission
 2418 Crossroads Dr., Suite 1000
 Madison, WI 53718-7896

According to s. 230.44 (3), Stats., appeals filed under s. 230.45 (1) (a), Stats., “may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later...”

Decisions grieved to the commission as the final step arbiter under s. 230.45 (1) (c), Stats., must, according to s. ER 46.07 (2), “be filed within 30 calendar days after service of a decision issued at the third step of the grievance procedure... or within 30 calendar days after the last day on which the employer could have served a timely decision, whichever is sooner.”

Appeals filed under s. 230.45 (1) (d), Stats., of denials of claims for leave with pay due to hazardous duty injury must, according to s. ER 28.06, be filed “within 30 calendar days after being notified of such decision or within 30 calendar days from the effective date of the decision, whichever is later.”

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; am. Register, May, 1996, No. 485, eff. 6-1-96; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661.

ERC 92.02 Fees for filing appeals. (1) Notwithstanding s. 230.44 (3), Stats., and s. ERC 92.01, payment of a fee or filing of a hardship affidavit in lieu of fee payment is required for appeals subject to the fee payment of s. 230.45 (3), Stats.

Note: Appeals subject to the fee payment of s. 230.45 (3), Stats., include appeals filed under:

1) s. 230.44 (1) (a), Stats. (relating to personnel decisions made or delegated by the administrator of the Division of Merit Recruitment and Selection),

2) s. 230.44 (1) (b), Stats. (relating to personnel decisions made or delegated by the Director of the Office of State Employment Relations — including classification decisions),

3) s. 230.45 (1) (c), Stats. (relating to final step arbitration under s. 230.04 (14), Stats.), or

(2) Except as provided under sub. (6), the commission may take no action to resolve an appeal for which the payment of a fee is required until the commission receives the fee or hardship affidavit as required under this section.

(3) **PAYMENT OF FEES. (a) Fee amount.** Except as provided for hardship cases in subs. (4) and (5), the fee for filing an appeal with the commission is \$50.00.

(b) *How fees are paid.* Fees shall be paid by money order, certified check, cashier’s check or bank check made payable to the “State Treasurer of Wisconsin” and must be received, whether in person or by mail, at the commission’s offices. Fees may not be paid in cash, by personal check or in installments.

Note: The fee requirements of this section apply to each appellant who submits an appeal, whether such submission is alone or in conjunction with other appellants.

(4) **EXCEPTIONS FOR HARDSHIP CASES. (a) Income definition.** “Income” means total annual cash receipts before taxes from all sources, including but not limited to: money wages before any deductions; net receipts from self-employment; regular payments from social security, retirement, unemployment compensation, workers’ compensation, veterans’ payments, and public assistance; alimony; child support; college or university scholarships,

grants, fellowships and assistantships; and net rental income. Excluded are noncash benefits such as the employer-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, and such noncash federal benefit programs as food stamps, school lunches and housing assistance.

(b) *The hardship exception.* An appellant may qualify for a hardship exception if either of the following conditions are met:

1. The appellant’s income is at or lower than the federal poverty level as defined by the federal department of labor under 42 USC 9902 (2), and where the appellant has cash resources totaling exactly or less than one month’s rent and food for appellant’s family.

2. Similar circumstances exist which demonstrate that appellant is unable to pay the filing fee without suffering severe financial hardship.

Note: The 2014 poverty level for a family unit of one was set at \$11,670, with an additional \$4,060 added for each additional family member.

(c) *Entitlement to the hardship exception.* An appellant may demonstrate entitlement to the hardship exception by completing and timely filing a notarized affidavit stating that the appellant meets one of the conditions set forth in par. (b).

(d) *Penalty for affidavit made in bad faith.* The commission may dismiss an appeal on the merits if it determines that the appellant falsified a hardship affidavit to avoid payment of the filing fee.

Note: Falsification of a hardship affidavit also might be considered as a Class D felony, under s. 946.31 (1) (e), Stats.

(5) **TIME LIMITS FOR PAYING FEES. (a) Requirements at time of filing.** Except as provided under par. (b), the fee or the hardship affidavit for filing an appeal shall be received by the commission at the time the appeal is filed.

(b) *Exceptions; time limits.* 1. If an appeal is filed without each appellant enclosing either the fee payment or hardship affidavit, the commission shall send each remiss appellant a letter advising of the requirement to either pay the fee or to submit a hardship affidavit.

2. A fee payment meeting the requirements of sub. (3) (a) and (b), received by the commission within 30 days of the date appearing on the commission’s letter mailed under subd. 1., will be considered a timely paid fee. Alternatively, a hardship affidavit meeting the requirements of sub. (4) (b) and (c) received by the commission within 30 days of the date appearing on the commission’s letter will be considered to meet the requirements of this section.

(c) *Exceptions; defective hardship affidavit.* 1. An appellant whose initial hardship affidavit does not meet the requirements of this section shall be sent a letter from the commission which provides an opportunity to resubmit.

2. A hardship affidavit meeting the requirements of sub. (4) (b) and (c) received by the commission within 30 days of the date appearing on the commission’s letter mailed under subd. 1., shall be considered to meet the requirements of this section. Alternatively, a fee payment meeting the requirements of sub. (3) (a) and (b), which is received by the commission within 30 days of the date appearing on the commission’s letter shall be considered to meet the requirements of this section.

(6) EFFECT OF FAILING TO TIMELY FILE FEE PAYMENT OR HARDSHIP AFFIDAVIT. The commission shall dismiss without prejudice the appeal of any appellant who has failed to submit the required fee payment or hardship affidavit within the time limits under sub. (5).

(7) REFILED APPEALS. The filing date for an appeal which is refiled after dismissal under sub. (6), shall be determined by the date upon which the commission receives the refiled action rather than the filing date of the initial appeal.

Note: For example, where an initial appeal was filed on January 7, 1995, and was later dismissed by the commission for nonpayment of fees, the filing date for the refiled appeal would be the date the commission receives the refiled appeal, rather than January 7, 1995.

History: Cr. Register, May, 1996, No. 485, eff. 6-1-96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.

ERC 92.03 Appeals. (1) FORM AND CONTENT. All appeals shall be in writing. Otherwise, there is no form that is to be used for filing an appeal. Appeals are not required to conform to any technical requirements except they shall identify the appellant. However, appeals should also contain the following:

- (a) The appellant's address and telephone numbers at work and at home.
- (b) The name of the state agency that took the personnel action

being appealed.

- (c) The facts forming the basis for the appeal.
- (d) The reason the appellant believes the action to be improper.
- (e) The relief or remedy requested.
- (f) A copy of any written decision being appealed.

(2) AMENDMENT. An appeal may be amended, subject to approval by the commission, to clarify or amplify allegations or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date of the appeal.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87; renum. from PC 3.02, Register, May, 1996, No. 485, eff. 6-1-96.

ERC 92.04 Notice to respondents. The commission shall serve a copy of the appeal upon each respondent.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; renum. from PC 3.03, Register, May, 1996, No. 485, eff. 6-1-96.

ERC 92.05 Answers. Respondents may file written answers within 20 days after service of the appeal. If no answer is filed, every material allegation of the appeal is in issue.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87; renum. from PC 3.04, Register, May, 1996, No. 485, eff. 6-1-96.