

**Title 8—DEPARTMENT OF  
LABOR AND INDUSTRIAL RELATIONS  
Division 20—Labor and Industrial  
Relations Commission  
Chapter 4—Rules Relating to Employment Security Appeals**

**PROPOSED AMENDMENT**

**8 CSR 20-4.010 Review—Applications.** The Labor and Industrial Relations Commission (LIRC) is amending section (2); amending and adding new sub-sections (A), (B), (C), and (D) to section (4); amending sub-sections (A) and (B) of section (5); deleting sub-section (C) of section (5); deleting sections (6), (7), (8), (9), and (10); and amending section (11).

*PURPOSE: This amendment creates a procedure for requesting briefing and/or oral argument in employment security matters, updates the provisions pertaining to requests to submit additional evidence to reflect current practice, deletes provisions pertaining to hearings before the LIRC that do not reflect current practice, and provides guidelines for what the LIRC may do upon receipt of an untimely application for review.*

(2) Upon receipt of the application, *[the commission shall mail]* **an acknowledgment of receipt and a copy of the application [or notice of the issues raised by it] will be sent** to the last known address of each interested party to the decision.

(4) *[Oral argument by counsel for the parties at issue may be granted by the commission; provided the request to present oral argument is made within ten (10) days of the filing of the application for review. A claimant may present oral argument on his/her own behalf. A brief shall be filed before oral argument shall be allowed, unless this requirement is waived by the commission. All briefs shall contain a certificate of service verifying that a copy has been sent to the opposing party.]* **Briefs and Oral Argument. The party filing an application for review (or “petitioner”) may request, in the application, to file a brief. The commission may, in its discretion, allow or deny briefing in the case. If briefing is allowed, the commission secretary will provide, via written correspondence to all parties, a briefing schedule. Unless a modified briefing schedule is ordered by the commission, the petitioner’s brief will be due fifteen (15) days from the date of the commission secretary’s correspondence establishing the briefing schedule. Respondent briefs or memoranda of law will be due within ten (10) days after the date of the commission secretary’s correspondence acknowledging the commission’s receipt of the petitioner’s brief or memorandum of law. Because of the federal regulations requiring prompt decision-making by the commission, requests to extend the briefing schedule in employment security matters are generally disfavored, and will only be granted in extraordinary circumstances.**

(A) All briefs are subject to the following requirements:

1. Be on paper of size eight and one-half inches by eleven inches (8 1/2" x 11");
2. Be typed on one (1) side of the paper;
3. Have a left, right, bottom, and top margin of not less than one inch (1"). Page numbers may appear in the bottom margin, but no other text may appear in the margins;
4. Have all pages consecutively numbered;
5. Use characters throughout the briefs, including footnotes that are not smaller than thirteen- (13-) point font, Times New Roman;
6. Be double-spaced; provided, however, that the cover, if any, certificate of service, and signature block may all be single-spaced; and

7. Contain a certificate of service verifying that a copy has been sent to the opposing party.

(B) The petitioner's brief shall not exceed thirty (30) pages. A respondent's brief shall not exceed twenty-five (25) pages. Upon its own motion, or upon motion by any interested party, the commission may, in its discretion, strike any brief or portion of a brief that is not filed in accordance with these rules.

(C) The brief of the petitioner should contain a fair and concise statement of facts without argument. The respondent's brief may supplement the statement of facts if necessary. The briefs should identify the issues in dispute and address those issues only, state concisely the factual or legal support for the party's positions, and contain a conclusion in detail as to the decision, award or action requested from the commission.

(D) Oral argument may be ordered by the commission upon its own motion or upon a request set forth in an application for review or response, if any. Untimely requests for leave to present oral argument will not be entertained nor will any request to present oral argument in lieu of a brief be allowed.

(5) Additional Evidence.

(A) After an application for review has been filed with the commission, any interested party may *[file an application with the commission for]* **request** permission to submit additional evidence *[at a hearing before the full commission or its duly authorized representative]*. The **commission will not consider** *[hearing of]* additional evidence *[by the commission will not be granted except upon the ground of]* **unless the evidence is** newly discovered *[evidence which]*, **or the need for the evidence could not have been reasonably anticipated before the hearing, or the evidence** could not with reasonable diligence have been produced at the hearing before the appeals tribunal. The *[petition for authority]* **request** to submit additional evidence *[must]* **should** set out specifically and in detail—

1. The nature and substance of the newly discovered evidence;
2. Names of witnesses to be produced; and
3. Nature of the exhibits to be introduced.

(B) *[The commission will consider the application to submit additional evidence and answer, if any, of opposing parties, without oral argument of the parties and enter an order either granting or denying the application. If the application is granted, the opposing party(ies) will be permitted to present rebuttal testimony.]* **Before accepting additional evidence into the record, the commission will send written notice to all interested parties advising them of the request and allowing an opportunity to submit to the commission, within fifteen (15) days, written objection to the request to submit additional evidence. If a timely objection is received, the commission may issue an order allowing or denying the request to submit additional evidence, or may order that the appeals tribunal hold a hearing to permit all interested parties an opportunity for cross-examination and/or the presentation of rebuttal evidence. If no objections are received within fifteen (15) days of the commission's notice of the request to submit additional evidence, the commission may accept the additional evidence into the record without further notice to the parties.** The commission is opposed, as a matter of policy, to the introduction of additional evidence except when it considers this action necessary for the furtherance of justice. Therefore, all available evidence should be introduced at the hearing before the appeals tribunal.

*[(C) If the commission decides to take additional evidence in any matter before it for review, notice of the hearing to secure the evidence shall be mailed to the last known address of each interested party at least seven (7) days before the date of hearing; provided, however, that a shorter period of notice may be given if the shorter period is not prejudicial to the parties. The notice shall specify the place, date and time of hearing.]*

(6) *The hearing shall be held either by the commission or its duly authorized representative at a place selected by the commission or by the representative. Any hearing may be adjourned, postponed or continued from time-to-time or place-to-place at the discretion of the commission or the discretion of the representative.*

(7) *All hearings shall be conducted in an informal but orderly manner. The commission and its representative shall follow in each case that procedure which it believes will best develop all of the pertinent facts with respect to the issues without regard to common law or statutory rules of evidence and other technical rules of procedure. The commission or its representative may examine all parties and witnesses and shall determine the order or procedure for each hearing.*

(8) *Any individual may appear for him/herself in any hearing. Any partnership may appear by any of its members. An officer of a corporation or association or any other duly authorized person may attend a hearing on an application to which the corporation or association is an interested party and may be a witness in the hearing. Any party may be represented by an attorney-at-law and no one who is not an attorney may appear in a representative capacity. Persons whose presence would be detrimental to the proper conduct of the hearing may be excluded from the hearing room by the commission or its duly authorized representative.*

(9) *Subpoenas to compel the attendance of witnesses and the production of records at a hearing may be issued by the commission or its representative upon a statement of the necessity therefore made by the party requesting the issuance of the subpoena.*

(10) *Witnesses subpoenaed for the hearing before the commission or its representative shall be allowed mileage and per diem at a rate fixed by the division. These witness fees and mileage shall be claimed at the time of hearing and shall be certified to by the witness. Approved payment shall be made out of the Unemployment Compensation Fund. Under no circumstances shall parties to the case be granted witness fees or mileage.*

(11)] **(6)** An application for review filed more than thirty (30) days from the date of notification or mailing by the division is untimely. *[Untimely applications may be summarily denied by the commission without consideration of the merits.]* **The commission does not have statutory authority to accept untimely applications for review. However, if the application for review alleges either that the party filed an earlier, timely application for review that was not properly acknowledged, or that the party was deprived due notice of the decision of the appeals tribunal, the commission may remand the matter for a hearing before the appeals tribunal for the purpose of taking evidence to determine whether the commission may take jurisdiction of the appeal.**

*AUTHORITY: sections 286.060, [and] 288.200, [RSMo Supp. 1997] and 288.230, RSMo [1994] Supp. 2018. Original rule filed Dec. 18, 1975, effective Dec. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed April 11, 2019.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Robert Cornejo, Chairman, PO Box 599, Jefferson City, MO 65102-0599. To be considered, comments must be received*

*within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*