



Updates from the Commission

2023 Kids' Chance CLE

ROLE OF LIRC in Work Comp

Reviews appeals of orders and awards of workers' compensation administrative law judges.

Approves/Disapproves:

- Settlements of disputed claims pending before the LIRC or the appellate courts.**
- Commutations of permanent total disability awards, death awards, and future medical left open in an underlying settlement or award.**
- Motions to review and change award based on a change in condition.**
- Motions for substitution after the death of a party.**

Commissioners



Public Member – Rodney Campbell

- Current term ends June 2024

Employee Member – Vacant since February

- Current term ends June 2026

Employer Member – Kathryn Swan

- Current term ends June 2028

LIRC Staff



Commission Secretary – Karla Hogg

- Six clerical staff

Chief Legal Counsel – Lucas Boling

- Staff counsel: Catherine Barrie and Michael Auer

- Chris Elster joining next month

Doing the Work



3,346 decisions issued FY 2022

3,171 unemployment decisions

- More than 76% increase from FY 2021

172 workers' compensation decisions

3 prevailing wage objection decisions

More Numbers



FY 2022 Workers' Compensation Awards

Final Award Allowing Compensation

- Affirm = 21
- Modify = 3
- Reverse = 1

Final Award Denying Compensation

- Affirm = 19
- Modify = 0
- Reverse = 2

Work Comp Connect



Workers' Compensation Modernization Project
- <https://labor.mo.gov/wcc>

Development Kickoff 08/30/2022

Work Comp Connect will be utilized by DWC and the LIRC

LIRC Regulations 8 csr 20



Title 8 (CSR) – Labor & Industrial Relations

Division 20 – Labor & Industrial Relations Commission

Chapter 3 – Rules related to Division of Workers’ Compensation

Please read these as they are very important, and the LIRC routinely sees non-compliance.

In addition, check back every year as more changes will be coming as the Work Comp Connect project progresses and new Commissioners are appointed.

Electronic filing



§ 287.480.1 amended in 2021:

“... the commission may allow filing of applications for review, briefs, motions, and other requests for relief with the commission by electronic means, in such manner as the commission may, by regulation, prescribe.”

Electronic filing



Updated regulation effective 08/30/2022

8 CSR 20-2.010

Applications for review, motions, briefs, or other filings will be accepted via mail, fax, or electronic means listed on the LIRC website.

E-mail is not accepted.

Electronic filing is currently available through Box.

FILINGS



Updated regulation effective 08/30/2022

8 CSR 20-3.030

Updates regarding applications for review; parties' briefs; and extraordinary briefing requests (extension of time, additional pages, etc.).

Please review for compliance. The LIRC may decline to consider filings that do not comply with the rules.

8 CSR 20-3.030(5)(F)



(F) Extraordinary Briefing Requests.

1. Parties requesting an extension of time to file a brief, an extension of page length, or any other extraordinary request pertaining to briefing, may make such request to the commission in writing prior to the last date for filing their brief, such request to include the following:

- A. The number of additional days, pages, or other specific relief requested;**
- B. A certification that a copy of the request has been served to all opposing parties upon the same date and time, and via the same means, that such request is sent to the commission;**
- C. An indication whether the requesting party has conferred with opposing parties regarding the request, and if not, why not;**
- D. An indication whether opposing parties have registered any objection to the request; and**
- E. The specific facts or circumstances motivating the request.**

2. The commission may decline to consider a party's request for an extension of time to file a brief, an extension of page length, or any other extraordinary request pertaining to briefing where the party's request fails to comply with the foregoing or where it appears the party has engaged in any dilatory practice, or other conduct prejudicial to the efficient and timely adjudication of the appeal.

8 CSR 20-3.030(5)(F)



In other words:

Do NOT wait until the day your brief is due – file your request beforehand.

State what you want – request a specific number of days or pages.

State why you want it – do NOT give boilerplate language – give at least some specifics (vacation, upcoming trial on separate case, etc.).

Confirm whether you contacted the other party and their response, or if not, why not – show some professional courtesy.

Serve the request to opposing party in same manner as sending to LIRC – see point above about professional courtesy.

GENERAL GUIDELINES FOR REQUESTS



Generally, requests for an extension of time have been granted where the person making the request did everything in the previous slide showing the request is reasonable and not just to delay the process.

Depending on circumstances, a reasonable request might be, for example, roughly the same amount of time given to file the brief (i.e. 30 days to file the brief and the request is for an additional 30 days or less).

More specifics have helped in evaluating longer requests (i.e. attorney has a “personal medical procedure scheduled”).

The rule highlights the importance of letting the LIRC know if the request is “by consent.”

GENERAL GUIDELINES FOR REQUESTS



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For requests for page extensions – requests go to the Commissioners for a vote.

LIRC may decline to consider any brief (or any portion of a brief) over the page limit without an approved extension.

8 CSR 20-3.030(5)(E) “Upon its own motion, or upon motion by any interested party, the commission may, in its discretion, decline to consider any brief or any portion of a brief that is not filed in accordance with these rules...”

Settlements vs. Commutations



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§ 287.390 is for compromise settlements and sets a lower standard

- **Must be in accordance with the rights of the parties**
- **No undue influence or fraud**
- **Employee fully understands his/her rights and benefits**
- **Voluntarily agrees to accept the terms of the agreement**

§ 287.530 is for commutations and sets a higher standard

- **Payment must be equal to the commutable amount of future installments due**
- **Best interests of the employee (or dependents of a deceased employee) or avoid undue hardship/expense**

Settlements vs. Commutations



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8 CSR 20-3.010(5) – Lump Sum Payment of Compensation (Motion for Commutation)

(H) Where there is a prior award of benefits or an approved settlement that has finally resolved the parties' respective rights and duties with regard to periodic benefits payable in the claim, the LIRC *cannot* consider a joint motion for payment of a lump sum as a compromise settlement under § 287.390, unless the parties are able to identify, a legitimate, presently justiciable dispute, over which the LIRC would have jurisdiction.

Settlements vs. Commutations



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8 CSR 20-3.010(5) – Lump Sum Payment of Compensation (Motion for Commutation)

(H) ... In the absence of such dispute, and where the parties desire merely to close out or redeem the remaining obligations under the award or settlement via payment of a lump sum, the LIRC will treat the motion as one for commutation pursuant to § 287.530.

Commutations



8 CSR 20-3.010(5) – Lump Sum Payment of Compensation (Motion for Commutation)

(I) Where a motion for commutation is jointly agreed by the parties, the LIRC will consider the motion provided it includes the following:

- 1. For motions to commute PTD or death benefits...**
- 2. For motions to commute open future medical where the award or settlement does not expressly preserve to E/I the discretionary right to close future medical by funding an annuity or MSA...**

Looking Ahead



Arising out of and in the course of employment is an issue that seems to evolve over time through case law.

- What impact will increase of remote work have?

Courts are continuing to interpret 2013 amendments to § 287.220 regarding claims against the Second Injury Fund. Decisions impact all parties, including employers.

Work Comp Connect – watch for updates from DWC

Looking Ahead



Redaction of Confidential Information

If you are involved in an appeal from a Commission decision, you need to be aware of COR 2.02 and the pending statutory changes to § 509.520 RSMo.

Looking Ahead



Redaction of Confidential Information

- **Effective July 1, 2023, Missouri Supreme Court Operating Rule 2.02 (COR 2.02) requires the redaction of confidential information in any document offered for filing in any Missouri court.**
- **Pending legislative changes to § 509.520 RSMo also address confidential and personal identifying information in documents filed with the court.**

Looking Ahead



Redaction of Confidential Information

COR 2.02.1(c): “...any counsel, party, or other person offering a document for filing in any court shall redact information that is confidential pursuant to statute, court rule or order, or other law.”

COR 2.02.1(d): “The responsibility for redacting confidential information rests solely with the counsel, parties, or any other person filing the document.”

Looking Ahead



Redaction of Confidential Information

After a Notice of Appeal is filed:

§ 287.495.1 RSMo: The Commission has a ministerial duty to “return to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and award, which shall thereupon become the record of the cause.”

The Commission remains a neutral. The parties are best positioned to identify and redact confidential information in the record, including in the transcript, pleadings, and exhibits.

Looking Ahead



Redaction of Confidential Information

The Commission will continue to carry out its ministerial duties under § 287.495.1 RSMo and return to the court all unredacted documents that become the record on appeal.

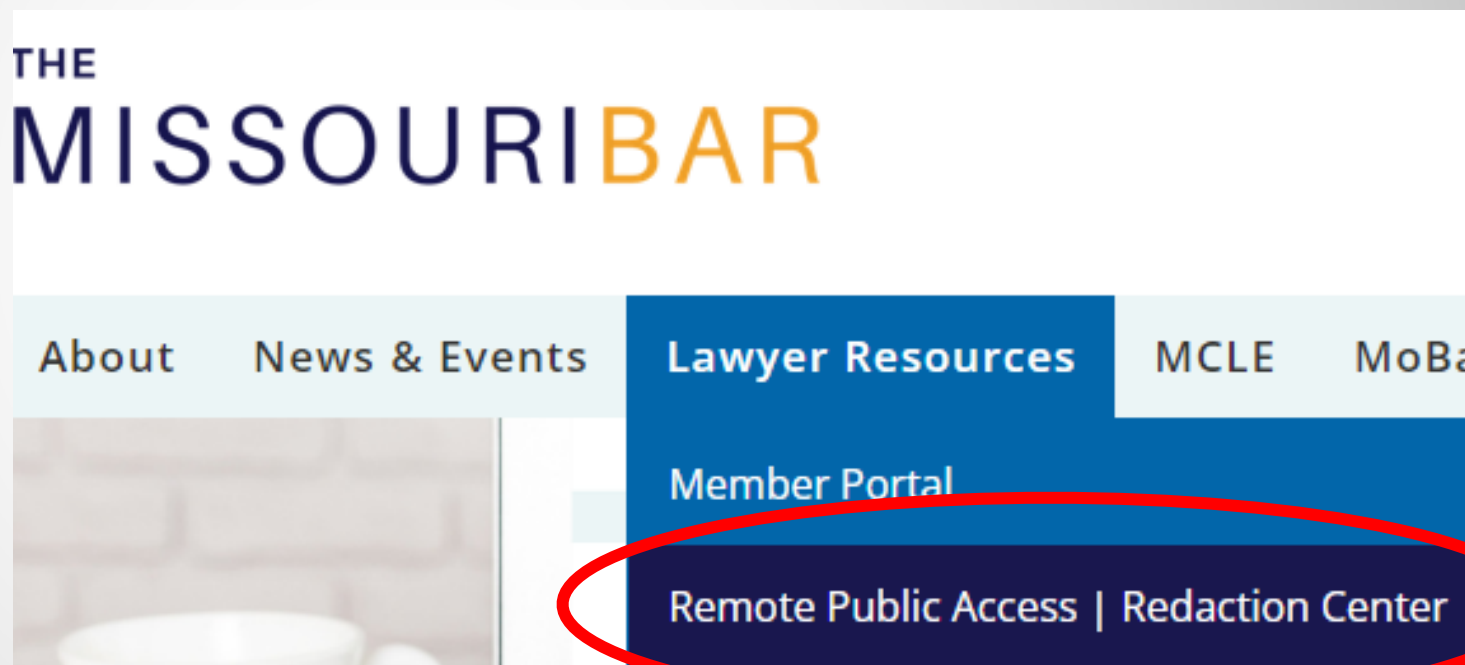
When the Commission returns the unredacted record to the court, the parties should be mindful of their obligations to review and redact that record under COR 2.02.

Looking Ahead



Redaction of Confidential Information

Find links to
COR 2.02
along with
information
and resources
for
compliance
with the rule at
www.mobar.org



Looking Ahead



Case Processing

The Commission's limited resources must be allocated to cases involving:

- workers' compensation**
- unemployment compensation**
- prevailing wage**
- tort victims' compensation fund**

Looking Ahead



Case Processing

The Commission's unemployment caseload increased by approximately 5X due to COVID-19; the Commission's staffing did not increase.

With limited resources, an increase in unemployment cases impacts the time available to process workers' compensation cases.

Looking Ahead



Case Processing

The number of unemployment cases is still higher than normal, but recently appears to be trending downward.

The Commission and its staff appreciate your patience as the Commission works through the increased caseload.

Looking Ahead



Case Processing

Workers' Compensation cases are in a queue and are in various stages of review until a decision is issued.

If there are procedural questions, you can call and speak with clerical or counsel for information.

If you call regarding the status of your case, the only information available is that the case is under review.



QUESTIONS?



THANK YOU!