

STATEMENT OF SCOPE

DEPARTMENT OF WORKFORCE DEVELOPMENT

Rule No.

Chapters DWD 218, 220, 221, 223, 224, 225

Relating to

Procedures of the Equal Rights Division for investigations, hearings, decisions and enforcement in cases involving complaints of discrimination in employment, housing, public accommodations, public employee safety and health, whistleblower retaliation and family and medical leave

Rule Type

Permanent

Detailed Description of the Objectives of the Proposed Rule

Appeal of an initial determination of "no probable cause"

Under the current rule, there is no requirement that a complainant state any reason for an appeal. To reduce the resources devoted to frivolous appeals, the Department of Workforce Development (DWD) would like to consider an amendment to require that the complainant state the basis for the appeal in writing.

Interest rate

The current rule provisions reflect former statutory provisions which set the interest rate for an unpaid monetary award at an annual rate of 12%. DWD would like to consider an amendment to set the interest rate in the same manner as s. 815.05(8), Stats., does for court decisions, at the prime rate plus 1%.

Place of hearing

The statutes require that the hearing should take place in the county of the alleged violation unless the respondent agrees to different location. To provide more flexibility in scheduling hearings, while maintaining the rights of the respondent, DWD would like to consider a rule change to permit the Equal Rights Division to initially set the hearing location, subject to approval by the respondent.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Appeal of an initial determination of "no probable cause"

The principal alternative to the policy change under consideration would be to continue the current procedure, under which a "no probable cause" determination may be appealed without any statement of a reason for the appeal. This allows the filing and consideration of an appeal that may later be found to be frivolous.

Interest rate

The principal alternative to the policy change under consideration would be to continue to have an interest rate for an unpaid monetary award that is currently much higher than the rate that applies to court judgments.

Place of hearing

The principal alternative to the policy change under consideration would be to continue the current procedure, under which the place of hearing is initially scheduled for a location in the county of the alleged violation.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

DWD has express statutory authority to make rules for the procedures to be followed in investigations, hearings, decisions and enforcement in cases involving complaints of discrimination in employment, housing, public accommodations, public employee safety and health, whistleblower retaliation and family and medical leave.

Employment discrimination. Section 111.375 (1), Stats., provides: "This subchapter shall be administered by the department. The department may make, amend and rescind such rules as are necessary to carry out this subchapter."

Open housing. Section 106.50 (1s), Stats., provides: "This section shall be administered by the department through its division of equal rights. The department may promulgate such rules as are necessary to carry out this section. No rule may prohibit the processing of any class action complaint or the ordering of any class-based remedy, or may provide that complaints may be consolidated for administrative convenience only."

Public accommodations. Section 106.52 (2), Stats., provides: "The department shall administer this section through its division of equal rights. The department may promulgate such rules as are necessary to carry out this section. No rule may prohibit the processing of any class action complaint or the ordering of any class-based remedy, and no rule may provide that complaints may be consolidated for administrative convenience only."

Public employee safety and health. Section 103.005 (1), Stats., provides: "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

State employee whistleblower retaliation. Section 230.89 (1), Stats., provides: "The division of equal rights shall promulgate rules to carry out its responsibilities under this subchapter."

Family or medical leave. Section 103.005 (1), Stats., provides: "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 40 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Employment discrimination. The rules will primarily affect employers and employees.

Open housing. The rules will primarily affect those providing housing, lenders, and tenants or purchasers of housing.

Public accommodations. The rules will primarily affect businesses and those alleging they have been subject to discrimination in places of public accommodation.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

Employment discrimination. The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964; the Equal Pay Act; the Age Discrimination in Employment Act (ADEA); and the Americans with Disabilities Act (ADA) which similarly prohibit discrimination in employment. There is no appeal of an adverse decision with EEOC; complainants can get a "right to sue" letter and take their claims directly into federal court.

Open housing. The U.S. Department of Housing and Urban Development (HUD) enforces Title VIII of the Civil Rights Act of 1968, the federal fair housing law, which similarly prohibits discrimination in housing. There is a reconsideration process if the HUD finds "no reasonable cause, but it does not involve a full evidentiary hearing. If complainants disagree after that process, they can sue in federal court. There are no procedures for appealing the initial decision, other than to request a reconsideration in writing.

Public accommodations. The U.S. Department of Justice enforces Title II of the Civil Rights Act of 1964, which covers discrimination in the provision of public accommodations, but it only acts in cases where it believes there is a pattern and practice of discriminatory behavior. Individual complaints can be pursued in court. There is no appeal procedure with the US Department of Justice.

Public employee safety and health. The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) enforces federal workplace safety laws that cover the private sector. OSHA's law contains an anti-retaliation provision. OSHA decides whether a violation occurred and the parties may object within 30 days of that finding. The letter of objection must explain whether the appellant disagrees with the findings and/or the order.

State employee whistleblower retaliation. There are no federal regulations that cover similar whistleblower retaliation.

Family or medical leave. The U.S. Department of Labor, Wage and Hour Division, enforces the federal Family and Medical Leave Act, which also can be enforced by private lawsuit. There is no appeal of an adverse decision by the Wage and Hour Division as complainants can go directly into court without resort to the agency.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

The rule will have a positive economic impact by reducing the number of hearings facing employers, small businesses or property owners against whom an unsubstantiated complaint has been filed.

Contact Person

For program questions:

Larry Jakubowski, DWD Equal Rights Division
201 E. Washington Avenue, Madison WI 53703
(414) 227-4396, Larry.Jakubowski@dwd.wisconsin.gov

For rulemaking questions:

Howard Bernstein, Chief Legal Counsel
DWD Office of the Secretary
P.O. Box 7946
Madison, WI 53707
Telephone: (608) 266-9427
Email: Howard.Bernstein@dwd.wisconsin.gov