

Clearinghouse Rule 07-010

State of Wisconsin
Department of Workforce Development
Division of Workforce Solutions
Enforcement of Indenture Agreements

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 295.001(3) and 295.20(2); to amend ss. DWD 295.08, 295.20(1), 295.20 (4)(a), 295.20(4)(b)(intro.), 295.20(4)(c)(intro.), 295.20(4)(d), 295.20(5)(a), 295.20(5)(b), 295.20(5)(f), and 295.20(6); and to repeal and recreate s. DWD 295.20(3), relating to enforcement of indenture agreements and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 106.01 (9) and 227.11 (2), Stats.

Statutes interpreted: Section 106.01 (5j), Stats.

Explanation of agency authority. Section 106.01 (5j), Stats., provides that the department may on its own motion, or on the complaint of any person, after due notice and a hearing, make findings and issue orders declaring any indenture at an end if it is proved at the hearing that any apprentice, employer or organization that is a party to the indenture is unable to continue with the obligations under the indenture or has breached the indenture.

Section 106.01 (9), Stats., provides that the department may investigate, fix reasonable classifications, issue rules and general or special orders and, hold hearings, make findings and render orders upon its findings as shall be necessary to carry out the intent and purposes of s. 106.01, Stats. Orders issued are subject to review under ch. 227, Stats.

Summary of the proposed rules. The current procedure for enforcement of an indenture agreement allows any person alleging that an indenture has not been complied with to file a complaint with the department. The department may investigate the complaint and attempt to resolve it by conference, conciliation, and persuasion. If the department is unable to resolve the complaint by conference, conciliation, or persuasion, it notifies the parties. If the complaint requested that the department cancel the indenture agreement, the notice informs the parties that the agreement will be cancelled 20 days from the date of the notice, unless any party receiving the notice makes a request in writing for a hearing on the matter.

The department, the Apprenticeship Advisory Council, and apprenticeship customers agree that there is a timeliness problem with the current procedure. The current conciliation process takes 5-6 months and the full appeal process takes 9 months to one year. During this time, apprentices stay in the same apprenticeship status they are in at the time of the appeal. If in an active status, apprentices who have failed school still attend school, and apprentices who have demonstrated that they are not capable of doing the work still need to be placed at job sites.

The proposed rule repeals the conference, conciliation, and persuasion provision. If a party to an indenture wants to cancel the contract, the department will send an intent to cancel letter. The apprentice has 20 days to object and explain why the contract should not be cancelled. If the department receives a timely objection, it will conduct an investigation. If the investigation supports cancellation, the apprentice will be promptly cancelled. The apprentice may appeal the decision but the apprenticeship will remain cancelled throughout the appeal process.

The proposed rule will also require that a hearing be transcribed and allow a party to obtain a copy of the transcript by purchasing a copy from the transcription agency. The current rule does not require transcription unless a written request is made by any party. However, under current practice, the hearing examiners generally request a transcription. A written transcript also supports administrative review. In addition, the proposed rule will replace the term "division" with "department." The current rule refers to the division of apprenticeship and training, which no longer exists.

Summary of factual data and analytical methodologies. Before presenting the rule for revision, the Apprenticeship Advisory Council and the Bureau of Apprenticeship Standards presented the proposed rule to apprenticeship customers through the State Committee process. Representatives from key organizations supported this change, including: Associated Builders and Contractors; AGC of Wisconsin; AGC of Milwaukee; National Electrical Contractors Association, both the State Chapter and the Milwaukee Chapter; Mechanical Contractors of Wisconsin; Sheet Metal Employer Association; United Brotherhood of Carpenters--Southern District; IBEW--all locals; Ironworkers--both locals; Laborers District Council; Sheet Metal Workers; Steamfitters--all locals; Sprinkler Fitters Local 183; State AFL-CIO; and Painters & Decorators District Council.

Comparison with federal law. Federal law provides that apprenticeship programs and apprentice agreements may be registered with the federal Department of Labor (DOL) or a recognized state apprenticeship agency that has been properly constituted under acceptable law or executive order and has been approved by DOL for state registration or approval of local apprenticeship programs and agreements for federal purposes. Complaints arising under an apprentice agreement may be submitted to the appropriate authority. A state apprenticeship agency may adopt a complaint review procedure that differs from the federal procedure.

The federal complaint procedure provides that a complaint shall be submitted within 60 days of the final local decision and shall set forth the specific matter complained of, together with all relevant facts and circumstances. DOL or the recognized state agency

shall render an opinion within 90 days after receipt of the complaint. During the 90-day period, DOL or the state agency shall make reasonable efforts to effect a satisfactory resolution between the parties involved.

Comparison with rules in adjacent states. In Illinois, Iowa, and Michigan, the U.S. Department of Labor resolves complaints under apprentice agreements pursuant to 29 CFR 29.1.

In Minnesota, complaints are resolved by the state apprenticeship agency. The state apprenticeship director conducts the initial investigation and issues a determination. If any person aggrieved by the decision files an appeal within 10 days of the date of service of the notice of decision, the agency appoints a hearing board composed of 3 members of the apprenticeship advisory council. The hearing board holds a hearing on the appeal and submit a recommended decision to the agency commissioner. The commissioner may adopt the recommended decision of the hearing board or disregard the decision and prepare a decision based on the findings of fact. Any person aggrieved by the agency decision may appeal to circuit court.

Effect on small businesses. The proposed rule affects small businesses as defined in s. 227.114 (1), Stats. The changes in the proposed rule will allow complaints under an indenture agreement to be resolved more quickly and without apprentices remaining in the apprenticeship pending the determination. This will relieve businesses of the hardship of maintaining apprentices who have demonstrated that they are not capable of doing the work during a lengthy appeal process.

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Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or elaine.pridgen@dwd.state.wi.us. The comment deadline is March 1, 2007.

SECTION 1. DWD 295.001 (3) is repealed.

SECTION 2. DWD 295.08 is amended to read:

DWD 295.08 Manual. The ~~division of apprenticeship and training~~ department shall keep on record and make available to all interested persons the apprenticeship manual as approved by the department on July 17, 1956, or as thereafter amended.

SECTION 3. DWD 295.20 (1) is amended to read:

DWD 295.20 Enforcement of indenture agreements. (1) COMPLAINTS. The ~~division~~ department may accept complaints from any person alleging that an indenture agreement entered into under ch. 106, Stats., is not being complied with by a party to the agreement.

SECTION 4. DWD 295.20 (2) is repealed.

SECTION 5. DWD 295.20 (3) is repealed and recreated to read:

DWD 295.20 (3) NOTICE. (a) *Notice of intent to cancel.* If any party to the indenture agreement requests that the department cancel the agreement, the department shall send a written notice of intent to cancel to the complainant and the other party or parties. The notice shall state that the agreement will be cancelled 20 days from the date of the notice, unless the department receives a written objection from any party within the 20-day period. An objection shall be on the form provided by the department with the notice.

(b) *No objection to cancellation.* If no party to the agreement has objected by the expiration of the 20-day period in the notice of intent to cancel, the agreement is cancelled effective the date of the cancellation notice under par. (d).

(c) *Timely objection.* If the department receives an objection within the 20-day period provided in the notice of intent to cancel, the following provisions apply:

1. The indenture agreement shall remain in the status it is in at the time that the department receives the objection, until the department cancels the agreement under sub. (d).

2. The department shall determine whether the information provided by the complainant and the objecting party supports the complainant's allegation that another party is not complying with the terms of the agreement, and the agreement should be cancelled. If the information provided is unclear or incomplete, the department shall investigate further.

3. If the department determines that the indenture agreement should be cancelled, the department shall send a cancellation notice under par. (d) and the agreement is cancelled effective the date of the notice. If the department determines that cancellation is not warranted, the department shall rescind the intent to cancel notice.

(d) *Cancellation notice.* If the indenture agreement is cancelled, the department shall send a written cancellation notice to the parties. Any party who objects may make a request for a hearing within 20 days from the date of the notice.

SECTION 6. DWD 295.20 (4) (a), (b) (intro.), (c) (intro.), and (d) are amended to read:

DWD 295.20 (4) APPROPRIATE SUBJECT MATTER. (a) The ~~division~~ department shall hold a hearing when a timely request is made under sub. (3) on any complaint alleging that the provisions of the indenture agreement are not being complied with by a party to the agreement. The ~~division~~ department shall not hold a hearing on complaints

which consist of matters which are unrelated to the provisions of the indenture agreement.

(b) (intro.) Examples of violations of the indenture agreement which may be appropriate subject matter for a hearing on a complaint to the ~~division~~ department under this chapter include but are not limited to:

(c) (intro.) Examples of matters which are unrelated to the provisions of the indenture agreement which are not appropriate subjects for a hearing by the ~~division~~ department under this chapter include but are not limited to:

(d) ~~Where~~ If the department's investigation of the ~~division~~ reveals that the dispute between the apprentice and the employer or other party to the indenture agreement is unrelated to the provisions of the indenture agreement, the ~~division~~ department may cancel the indenture agreement.

SECTION 7. DWD 295.20 (5) (a), (b), and (f) are amended to read:

(a) When the ~~division~~ department sets a date for a hearing, it shall notify each party to the indenture agreement at least 20 days prior to the date of the hearing.

(b) The person appointed by the ~~division~~ department as the hearing examiner shall not be any person who has participated in an initial investigation of the complaint ~~or the attempt to achieve a resolution of the complaint by conference, conciliation or persuasion.~~

(f) The hearing shall ~~not~~ be transcribed ~~unless a written request for such transcription is made by any party. If the hearing is transcribed, any.~~ Any party may obtain a copy of the transcript by ~~paying a reasonable fee as prescribed by the department~~ purchasing a copy from the transcription agency.

SECTION 8. DWD 295.20 (6) is amended to read:

DWD 295. 20 (6) CANCELLATION. This section does not apply to the request of either party that an indenture be cancelled during the probationary period specified in the indenture agreement, ~~except that the division may attempt to resolve disputes by conference, conciliation and persuasion.~~

SECTION 9. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22(2)(intro), Stats.