

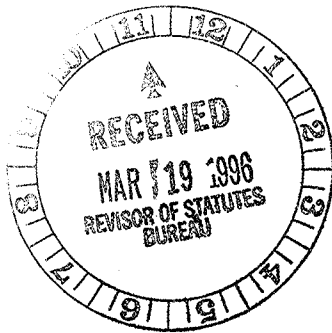
Clearinghouse Rule 95-177

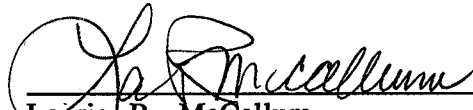
STATE OF WISCONSIN)
)
WISCONSIN STATE PERSONNEL COMMISSION)

I, Laurie R. McCallum, Chairperson of the Wisconsin State Personnel Commission and custodian of the official records, certify that the annexed rules, relating to updated information about the Commission's jurisdiction over appeals and complaints and the procedures followed by the commission (Clearinghouse Rule 95-177), were duly approved and adopted by this Commission on January 5, 1996.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I
have hereunto set my hand at the
Commission's offices located at Room
1004, 131 West Wilson Street, in the city
of Madison, this 19th day of March,
1996.





Laurie R. McCallum
Chairperson
Wisconsin State Personnel Commission

ORDER of the Wisconsin State Personnel Commission

INTRODUCTORY CLAUSE. The Wisconsin State Personnel Commission proposes an order to repeal PC 1.14; to amend PC 1.02 (2), (9) and (16), 1.08 (3), 1.10, 1.14, 2.01, 2.02 (1), 2.04, 2.07 (2), 3.01, 4.02, 4.05 (3) (b) and 5.05; relating to updated information about the Commission's jurisdiction over appeals and complaints, and the procedures followed by the commission.

Analysis prepared by: Wisconsin State Personnel Commission.

PLAIN LANGUAGE ANALYSIS.

Statutory authority: ss. 230.45 (1) (i) and 230.89 (1), Stats.
Statutes interpreted: ss. 103.10 (12), 111.39 (1), 227.44 (2s),
227.485, 230.44 (4) (b), and 230.45 (1) (c).

The changes presented in this rule were made to update existing rules to reflect statutory changes (such as in the commission's jurisdiction), to reflect current commission procedures, and to clarify existing rule provisions.

TEXT OF THE RULE. SECTION 1. PC 1.02 (2) is amended to read:

Note: This definition includes actions filed under s. 230.45(1)(a), (d), and (e) ~~and~~ (f), Stats., and grievances filed under s. 230.45(1)(c), Stats.

SECTION 2. PC 1.02 (9) is amended to read:

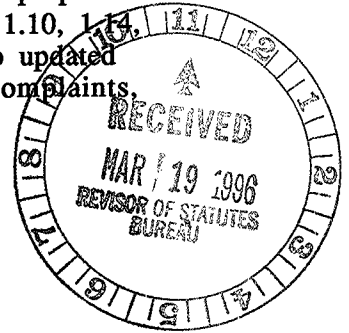
Note: This definition includes actions filed under s. 230.45 (1) (b), (g), (gm) and (j), and s. 103.10(12), Stats., which include fair employment act discrimination including fair employment act retaliation and claims of unfair genetic or honesty testing, public employe safety and health retaliation, "whistleblower" retaliation, discrimination for elder abuse reporting, and family or medical leave act claims.

SECTION 3. PC 1.02 (16) is amended to read:

(16) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, ~~that discrimination, retaliation, or unfair honesty testing that a violation probably has been or is being committed as alleged in the complaint.~~

SECTION 4. PC 1.08 (3) is amended to read:

(3) **MOTIONS TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION.** Any party may move at any time to dismiss a case on the ground the commission does not have subject matter jurisdiction. The commission may raise issues on its own motion



relating to its jurisdiction to hear the matter or some matter raised in an appeal or complaint. Each party shall be afforded an opportunity to file written arguments regarding the motion.

SECTION 5. PC 1.10 is amended to read:

Consolidation. ~~The commission may, on its own motion, consolidate 2 or more cases involving the same parties or one or more issues arising substantially out of the same circumstances or closely related circumstances. The commission may order consolidation of any case with any other case involving the same parties or one or more issues arising substantially out of the same circumstances or closely related circumstances.~~ Consolidation may be for investigation, hearing, decision or a combination thereof. Nothing in this section limits the right of a party to make a motion to consolidate or to object to the commission's motion.

SECTION 6. PC 1.14 is repealed.

SECTION 7. PC 2.01 is amended to read:

Time limits and address for filing complaints. All complaints shall be filed according to the appropriate time limits established by statute or rule and shall be filed at the offices of the commission. The time limit for filing complaints with the commission pursuant to Wisconsin's fair employment act or the elder abuse reporting law shall be the period set forth in s. 111.39(1), Stats.

SECTION 8. PC 2.01 is amended to read:

Note: The mailing address of the commission is:

State Personnel Commission
131 W. Wilson Street, Room 1004
Madison, WI 53702

The Wisconsin fair employment act provides that complaints under that act be filed "no more than 300 days after the alleged discrimination, ~~or unfair honesty testing or unfair genetic testing occurred.~~" s. 111.39 (1), Stats.

Complaints of ~~retaliation~~ retaliation relating to occupational safety and health are to be filed "within 30 days after the employe received knowledge of the discrimination or discharge" s. 101.055.

Complaints of retaliation under the "whistleblower law" must be filed "within 60 days after the retaliatory action allegedly occurred or was threatened or after the employe learned of the retaliatory action or threat thereof, whichever is last. s. 230.85 (1), Stats.

Complaints under the family medical leave act are to be filed "within 30 days after the violation occurs or the

employe should reasonably have known that the violation occurred, whichever is later." s. 103.10 (12) (b), Stats.

SECTION 9. *PC 2.02 (1) is amended to read:*

PC 2.02 Complaints. (1) **CONTENT.** Complaints should identify the name, address and telephone number of the complainant, the name of the respondent agency, the facts which constitute the alleged unlawful ~~discrimination, unfair honesty testing or retaliation~~ conduct and the statutory basis of the allegation ~~or type of discrimination, unfair honesty testing or retaliation being alleged.~~

Note: See the note in s. PC 1.02 (9), for listing of potential statutory bases.

SECTION 10. *PC 2.04 is amended to read:*

PC 2.04 Answers. Respondents may file written answers within 20 days after service of the complaint. If no answer is filed, every material allegation of the complaint is in issue. However, as part of an investigation, the commission may require that respondents file an answer to a complaint within a time period specified by the commission and may require that the answer include a statement regarding each allegation in the complaint, the respondent's version of the underlying facts, copies of documents relating to the allegations and the assertion of any legal defenses to the allegations. The commission may modify the specified period for good cause shown.

SECTION 11. *PC 2.07 (2) is amended to read:*

(2) **PROBABLE CAUSE DETERMINATIONS.** Upon either an initial determination of probable cause following investigation or a finding of probable cause following hearing, the commission shall seek to resolve the dispute between the parties by conciliation unless either party waives conciliation in writing. If conciliation is waived or is unsuccessful, the complainant may proceed to hearing on the issue of whether ~~discrimination, unfair honesty testing or retaliation~~ a violation occurred as alleged in the complaint.

Note: See the note in s. PC 1.02 (9), for listing of statutory bases over which the commission has jurisdiction.

SECTION 12. *PC 3.01 is amended to read:*

PC 3.01 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), (e) ~~or (f)~~, 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.

SECTION 13. PC 3.01 is amended to read:

Note: The mailing address of the commission is:

State Personnel Commission
131 W. Wilson Street, Room 1004
Madison, WI 53702

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."

SECTION 14. PC 4.02 is amended to read:

Note: For example, compliance with the "3 working days" requirement in s. PC 4.02 (intro.) means that the Commission and the opposing party must each receive a party's witness list and copies of exhibits no later than 4:30 p.m. on the Wednesday preceding a Monday hearing, where neither that Wednesday, nor the intervening Thursday or Friday is a legal holiday listed in s. 230.34 (4) (a), Stats.

SECTION 15. PC 4.05 (3) (b) is amended to read:

~~(b) Persons subpoenaed. — Persons, other than state civil service employees, subpoenaed as witnesses to commission hearings shall receive for attendance the fees and mileage provided for witnesses in civil actions in courts of record under ch. 885, Stats., provided the hearing examiner or the commission certifies that the witness' testimony was relevant and material. Any person not under the state civil service who appears before the commission by order are entitled to receive fees and mileage as provided in s. 230.44 (4) (b), Stats.~~

the witness' testimony was relevant and material. Any person not under the state civil service who appears before the commission by order are entitled to receive fees and mileage as provided in s. 230.44 (4) (b), Stats.

Note: The computation of witness fees under par. (b) is governed by s. 814.67 (1) (b) and (c), Stats.

SECTION 16. PC 5.05 is amended to read:

PC 5.05 Motions for fees and costs.

(1) Generally. ~~Any~~ Each party seeking an award of fees, costs or both shall file a motion and all of the following supporting documentation that includes:

~~(1)~~ (a) The number of hours for which compensation is sought, itemized according to the work that was performed, the date it was performed, the hours claimed for the work and the individual who performed the work;

~~(2)~~ (b) The hourly rate customarily charged by each individual for whom compensation is sought ~~supported by documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise;~~

~~(3)~~ (c) Other factors that affect the computation of fees or costs, as determined by the judiciary and by decisions of the commission; ~~and~~

~~(4)~~ (d) Documentation of costs for which the party seeks reimbursement.

(2) Motion raised under s. 111.39, Stats. Motions for fees and costs raised under s. 111.39, Stats., shall include supporting documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise.

(3) Motion raised under s. 227.485, Stats. Motions for fees and costs raised under s. 227.485, Stats., shall be heard under the standards and procedures noted in s. 227.485, Stats.

Note: The commission's authority to award fees and costs is derived from ss. 103.10 (12) (d), 227.485 and 230.85(3), Stats., and from *Watkins v. LIRC*, 117 Wis.2d 753, 345 N.W.2d 482 (1984).


EFFECTIVE DATES. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

APPLICABILITY SECTION: This rule shall apply to all pending cases as of the effective date.

FINAL REGULATORY FLEXIBILITY ANALYSIS. This rule will have no effect on small businesses.

FISCAL ESTIMATES. This rule creates no fiscal impact.

Dated: March 19, 1996



Laurie R. McCallum, Chairperson
Wisconsin State Personnel Commission



State of Wisconsin

PERSONNEL COMMISSION

131 West Wilson Street
Suite 1004
Madison, Wisconsin 53702
(608) 266-1995

March 19, 1996

Laurie R. McCallum
Chairperson

Donald R. Murphy
Commissioner

Judy M. Rogers
Commissioner

Gary L. Poulson
Deputy Revisor
Revisor of Statutes Bureau
131 W. Wilson St., Rm. 800
Madison, WI 53703-3233

Re: Request for publication in end-of-May administrative register.
Re: Updated information about the Commission's jurisdiction over
appeals and complaints, and the procedures followed by the
commission. (Clearinghouse rule #95-177)

Dear Mr. Poulson:

The Commission requests publication of the amendments to its existing administrative rules in the administrative register issued at the end of May 1996. The rule in proposed form was submitted to the presiding officer of each house on January 8, 1996. The rule was referred to the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs on January 9, 1996, where no action was taken. No action was taken at the Assembly level either. Accordingly, it appears that the rule is ready for final publication.

Enclosed are copies of the required order and certificate. The same documents were filed with the Secretary of State's office today. The Commission is unable to provide your agency with the text on a double-density disk because our software is not formatted for WordPerfect 5.1 or ASCII.

Please call if you have any questions.

Sincerely,

Judy M. Rogers,
Commissioner
(608) 266-9764

