

Chapter ER 46

GRIEVANCE PROCEDURE

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Note: Corrections made under s. 13.93 (2m) (b) 6., Stats., Register December 2003 No. 576.

ER 46.01 Policy. (1) Although the state encourages continuing informal communication between employees and management, it recognizes the value of a formal grievance procedure in a sound management program. It is the policy of the state and responsibility of the director to ensure that an established written grievance procedure relating to conditions of employment is available to state employees who are not covered by a collective bargaining agreement under subch. V of ch. 111, Stats., for the disposition of employee grievances.

(2) This grievance procedure shall ensure that each employee may, without prejudice, express and present a grievance through proper channels with the assurance of timely and thorough consideration.

(3) During the formal grievance procedures, the grievant and employer shall make efforts to resolve the grievance by seeking a mutually acceptable solution to the matters grieved.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.02 Definitions. In this chapter:

(1) "Decision" means the written response to a grievance by the employer representative, which includes the rationale for the response.

(2) "Employee" means a state employee in the classified civil service under s. 230.08 (3), Stats., except a limited term employee or an employee covered by a collective bargaining agreement under subch. V of ch. 111, Stats.

(3) "Employer" means an agency defined under s. 230.03 (3), Stats., in which the employee is or has been employed.

(4) "Grievance" means a written complaint by an employee requesting relief in a matter which is of concern or dissatisfaction relating to conditions of employment and which is subject to the control of the employer and within the limitations of this chapter.

(5) "Grievant" means an employee who has filed a grievance.

(6) "Group grievance" means a grievance filed by more than one grievant which involves like circumstances and facts for the grievants involved.

(7) "Relief" means a specific remedy directly affecting a grievant.

(8) "Retaliation" means any action taken by an employer in order to adversely affect the employee's conditions of employment, when such action is taken because of the employee's exercise of rights under this chapter.

(9) "Step" means a level of management authority where a grievance may be pursued.

(10) "Work rule" means a written regulation promulgated by the employer within its discretion which regulates the conduct of employees as it affects their employment.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (4) and (6) to (8), Register, May, 1988, No. 389, eff. 6-1-88.

ER 46.03 Scope. (1) Under this chapter, an employee may grieve issues which affect his or her conditions of employment, including any matter on which the employee alleges that coercion or retaliation has been practiced against the employee except as provided in sub. (2).

(2) An employee may not use this chapter to grieve:

(a) A personnel action or decision of the administrator or the director that is directly appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(b) An action delegated by the administrator or by the director to an appointing authority;

(c) A demotion, suspension, discharge, removal, layoff or reduction in base pay;

(d) A personnel action after certification which is related to the hiring process;

(e) Denial of hazardous employment benefits under s. 230.36 (4), Stats.;

(f) The reassignment of a career executive employee under s. ER-MRS 30.07 (1);

(g) The failure of a supervisor to process a reclassification request.

(h) An oral reprimand;

(i) The content of written agency rules and policies;

(j) A condition of employment which is a right of the employer as defined in s. ER 46.04; or

(k) Any matter related to wages, hours of work, and fringe benefits.

Note: An employee may appeal actions or decisions listed in sub. (2) (a) through (e) directly to the Wisconsin employment relations commission under s. 230.44, Stats.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84; reprinted to correct an error in (2) (b), Register, September, 1984, No. 345; am. (1), (2) (i) and (j), cr. (2) (k), Register, May, 1988, No. 389, eff. 6-1-88; correction in (2) (f) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1994, No. 466.

ER 46.04 Management rights. (1) Nothing in this chapter is intended to interfere with the sole right of the employer to carry out its statutory mandate and goals.

(2) For the purpose of this chapter, the management rights of the employer include, but are not limited to, the following:

(a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.

(b) Determining the size and composition of the work force.

(c) Managing and directing the employees of the agency.

(d) Hiring, promoting, transferring, assigning or retaining employees.

(e) Establishing reasonable work rules.

(f) Taking disciplinary action for just cause against an employee.

(g) Laying off employees due to lack of work or funds or organizational changes.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.05 Form and filing of the grievance. (1) Grievances shall be submitted to the designated employer representative on the forms provided by the employer.

(2) Only one subject matter shall be covered in any one grievance.

(3) A grievance shall describe:

(a) The condition of employment which is the subject of the grievance.

(b) The facts upon which the grievance is based.

(c) The relief sought by the employee.

(4) Employees may initiate a group grievance. In such a case, the grievants shall choose one individual grievant to represent the interests of the group. Group grievances shall be so designated at the first step of the grievance procedure and signed by all employees party to the grievance.

(5) The employer may consolidate grievances where a reasonable basis for consolidation exists.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. (3) (a), Register, May, 1988, No. 389, eff. 6-1-88.

ER 46.06 Procedures and time limits. (1) All grievances shall be filed with the designated employer representative no later than 30 calendar days from the date the employee first became aware or should have become aware of the matter grieved.

(2) Grievances shall be pursued in accordance with the following steps and time limits:

(a) *First step.* Within 7 calendar days of receipt of the grievance from the employee or representative, the designated employer representative shall meet with the grievant and representative to hear the grievance and deliver a written decision on the grievance form to the grievant and representative.

(b) *Second step.* 1. If the grievant is dissatisfied with the decision received from the employer representative at the first step under par. (a), the decision must be grieved to the next designated employer representative within 7 calendar days from receipt of the answer at the first step under par. (a).

2. The employer representative shall meet with the grievant and representative and attempt to resolve the grievance. A written decision shall be placed on the grievance form following the meeting by the employer representative and delivered to the grievant and representative within 7 calendar days from receipt of the grievance by the employer representative.

(c) *Third step.* 1. If the grievant is dissatisfied with the decision received from the employer representative at the second step under par. (b) 2., the decision must be grieved to the appointing authority or designee within 7 calendar days from receipt of the answer at the second step under par. (b) 2.

2. Upon receipt of the grievance at the third step under subd. 1., the designated employer representative shall meet with the grievant and representative to discuss and attempt to resolve the grievance. Following this meeting, the written decision of the agency shall be placed on the grievance form by the appointing authority of the agency or designee and delivered to the grievant and representative within 21 calendar days from receipt of the grievance to the third step under this paragraph.

(3) If the last day on which a grievance is to be filed or a decision is to be grieved or served is a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Stats., the grievance may be filed or the decision may be grieved or served on the next day which is not a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35 (4) (a) 10., Stats.

(4) A grievance or a decision is timely if received by the employer during normal business hours or postmarked by 12:00 midnight on the due date.

(5) The employer and grievant may mutually agree in writing to waive the time limits at any step under sub. (2).

(6) The employer and grievant may mutually agree to waive a meeting at any step to facilitate or expedite resolution of the grievance.

(7) The employer and grievant may mutually agree in writing to conduct either or both the second and third step meetings under sub. (2) (b) and (c), respectively, by telephone.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.065 Agency amendments. Each agency shall adopt this procedure or, subject to approval of the director, submit an amended procedure if that amendment would more efficiently promote the goals and policies of this chapter.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.07 Wisconsin Employment Relations Commission. (1) If the grievant is dissatisfied with the decision received from the appointing authority or designee at the third step under s. ER 46.06 (2) (c) 2., the decision may be grieved to the commission only if it alleges that the employer abused its discretion in applying subch. II of ch. 230, Stats., or the rules of the administrator promulgated under that subchapter, subchs. I and II of ch. 230, Stats., or the rules of the director promulgated under those subchapters, or written agency rules, policies, or procedures, except that decisions involving the following personnel transactions may not be grieved to the commission:

(a) A written reprimand;

(b) A performance evaluation; or

(c) The evaluation methodology used by an employer to determine a discretionary pay award, or the amount of the award.

(2) Grievances to the commission must be filed within 30 calendar days after service of a decision issued at the third step of the grievance procedure under s. ER 46.06 (2) (c) 2., or within 30 calendar days after the last day on which the employer could have served a timely decision, whichever is sooner.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84; reprinted to correct an error in (1) (c), Register, September, 1984, No. 345; am. (1) (intro.), Register, May, 1988, No. 389, eff. 6-1-88.

ER 46.08 Failure to meet time limits. (1) The employer shall reject any grievances not filed or any decision not grieved in accordance with the time limits set forth in this chapter. Any decision not grieved in a timely manner shall be decided on the basis of the last preceding decision.

(2) If the grievance is not answered within the time limits set forth in this chapter, the grievant may proceed to the next step under s. ER 46.06 (2) within 7 calendar days after the last day on which the grievance could have been timely answered.

(3) If the grievance at the third step under s. ER 46.06 (2) (c) 2. is not answered within the time limits set forth in this chapter, the grievant may proceed directly to the Wisconsin employment relations commission in accordance with s. ER 46.07.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.09 Grievant representation. (1) Each employee may have assistance by a representative of his or her own choice during the grievance procedure, including during informal resolution efforts.

(2) The employee and representative, if a state employee, shall be allowed a reasonable period of time during normal work hours, without loss of pay, to investigate, prepare and present the grievance upon reasonable notice, as determined by the employer.

(3) If the employer consolidates grievances, those individual grievants and their representatives, if state employees, shall be allowed a reasonable period of time during normal work hours, without loss of pay, to investigate, prepare and present the grievance upon reasonable notice, as determined by the employer.

(4) Any expense incurred by the grievant or representative in investigating, preparing or presenting a grievance shall be the responsibility of the grievant or representative.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.10 Retaliation prohibited. No employer may retaliate against a grievant, representative, or witness who participates or is scheduled to participate in proceedings, for using the grievance procedure. This section may be enforced by order of the director under s. 230.04 (3), Stats.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.11 Retroactivity. No employer may grant any relief retroactive to more than 30 calendar days prior to the filing of the grievance at the first step under s. ER 46.06 (2) (a).

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84; am. Register, May,

1988, No. 389, eff. 6-1-88.

ER 46.12 Notification of employees. The employer shall provide written notice to employees within the agency of the existence and content of the grievance procedure and any changes thereto.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.

ER 46.13 Informal discussions. Nothing in this chapter precludes an employee from informally discussing with the employer any matter of concern, whether grievable or not.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.