

WISCONSIN HUMAN RESOURCES HANDBOOK

CHAPTER 430

EMPLOYEE GRIEVANCE PROCEDURE

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Sec. 430.010 Introduction

Section 230.12(1)(h), Wis. Stats., states “[t]he compensation plan may include other provisions relating to pay, benefits, and working conditions that shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director.” Section G.10 .00 of the 2011-2013 Compensation Plan provides that “[n]otwithstanding ch. ER 46, Wis. Admin. Code and s. 230.44, Wis. Stats., the employee grievance procedure shall be as identified in the Wisconsin Human Resources Handbook Chapter 430 on the Employee Grievance Procedure.” Pursuant to these authorities, this chapter sets forth the procedures by which employees may contest certain actions which affect their conditions of employment.

Note: Grievance procedures for represented Public Safety Employees – employees in positions classified as State Patrol Troopers and State Patrol Inspectors - are described in their collective bargaining agreement.

Sec. 430.020 Statutory Authority

Section 230.12(1)(h), Wis. Stats., states “[t]he compensation plan may include other provisions relating to pay, benefits, and working conditions that shall supersede the provisions of the civil service and other applicable statutes and rules promulgated by the director.”

Section G.10 .00 of the 2011-2013 Compensation Plan provides that “[n]otwithstanding ch. ER 46, Wis. Admin. Code and s. 230.44, Wis. Stats., the employee grievance procedure shall be as identified in the Wisconsin Human Resources Handbook Chapter 430 on the Employee Grievance Procedure.”

Section 230.44(1)(c) provides:

230.44 Appeal procedures. (1) Appealable Actions And Steps. Except as provided in par. (e), the following are actions appealable to the commission under s. 230.45(1)(a):

(c) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class, or an employee has served with the state as an assistant district attorney for a continuous period of 12 months or more, the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

Section 230.36(4), Wis. Stats., states that “[a]n employee denied [hazardous employment] benefits under this section may appeal to the commission under s. 230.45(1)(d).

Section 230.45, Wis. Stats., provides in relevant part:

230.45 Powers and duties of commission and division of equal rights. (1) The commission shall:

- (a) Conduct hearings on appeals under s. 230.44.
- (d) Hear appeals under s. 230.36(4).

Sec. 430.030 Grievance

Permanent and project employees, employees that have served with the Office of State Public Defender as a staff attorney for a continuous period of 12 months or more, and employees that have served with the state as an assistant district attorney for a continuous period of 12 months or more, may file a formal grievance through this grievance procedure contesting the following actions if the employee alleges the action was taken without just cause:

- demotion
- layoff
- suspension (including letters in lieu of suspension)
- discharge
- reduction in base pay
- written reprimands, but only through the second step of the grievance procedure, as set forth in this chapter

An employee may file a formal grievance through this grievance chapter contesting the denial of hazardous employment benefits under s. 230.36 and may appeal the denial to the commission under s. 230.45(1)(d).

An employee may file a formal grievance through this grievance procedure contesting an action where the employee alleges the Employer abused its discretion in applying written agency rules, policies or procedures, but only through the second step of the grievance procedure, as set forth in this chapter.

Employees on original probation and project employees may file a grievance on any of the preceding actions, excluding discharge.

A representative may not file a grievance on behalf of an employee. A representative may not appeal a denied grievance to the next higher level step in the grievance procedure on behalf of an employee. An employee may grieve a discharge beginning with the second step of the grievance procedure.

After an employee has filed a grievance, the employee may designate a representative in writing. The representative will then be authorized to discuss the specifics of the grievance with the management designee. The management designee will contact the employee when scheduling grievance hearings.

After a disciplinary action has been imposed and a grievance filed, the employee/grievant may request in writing, and the agency will provide, documents which management used in determining the disciplinary action.

Employees should use the OSER grievance form (OSER-DCLR-222 (Rev. 12/2011)) to file grievances. Grievances must be filed using the multi-PLY OSER form and cannot be filed electronically. Employees may contact their agency human resources office for a copy of this form.

Sec. 430.040 Non-Grievable Actions

Actions **not** grievable under this procedure include the following:

1. Decisions made or delegated by the administrator that are appealable to the commission under Wis. Stat. § 230.44(1)(a);
2. Decisions made or delegated by the director that are appealable under Wis. Stat. § 230.44(1)(b). (Also see WHRH Chapter 420);
3. Personnel actions that are appealable to the commission under Wis. Stat. § 230.44(1)(d);
4. Personnel actions under § 230.275 that are appealable to the commission under Wis. Stat. § 230.44(1)(dm);
5. Determinations that a person was discharged from the unclassified service for just cause under Wis. Stat. § 230.337;
6. Delegation of an action by the OSER Director to an appointing authority;
7. Termination of limited term (LTE) or project employees;
8. The reassignment of a career executive employee under ch. ER-MRS 30, Wis. Adm. Code ;
9. The failure of a supervisor to process a reclassification request;
10. The content of written agency rules and policies;
11. Release of probationary employees;
12. Oral reprimands;
13. A condition of employment which is a management right of the employer under s. ER 46.04, Wis. Adm. Code (See Section 430.050 of this Chapter);
14. Any other matters related to wages, hours of work, types of fringe benefits, and other conditions of employment that are not expressly grievable under this chapter. Examples of such matters include, but are not limited to, discretionary merit compensation, allegations of missed overtime, assignment of overtime, and scheduling of work; and
15. Performance evaluations.

Sec. 430.050 Management Rights

Management possesses the sole right to carry out its statutory mandate and goals assigned to the agency and all management rights repose in management. Nothing in Ch. ER 46, Wis. Adm. Code or this chapter, is intended to interfere with the sole right of an agency to carry out its statutory mandate and goals. In accordance with Ch. ER 46.04(2), Wis. Adm. Code, management rights include, but are not limited to:

1. Utilizing personnel, methods, and means to carry out the statutory mandate and goals of the agency.
2. Determining the size and composition of the work force.
3. Managing and directing the employees of the agency.
4. Hiring, promoting, transferring, assigning or retaining employees.
5. Establishing reasonable work rules.
6. Taking disciplinary action against an employee for just cause.
7. Laying off employees due to lack of work or funds or organizational changes.

Sec. 430.060 Grievance Steps

A grievance procedure for employees will have the following steps. The usual management designee responding to the step will be:

- Pre-filing (if this step exists at the discretion of the agency) – first line supervisor;
- First step – division administrator level or designee;
- Second step –appointing authority level or designee; and
- Third step –OSER.

Grievances under this chapter which have not been resolved or settled under the foregoing procedure may be appealed to the Wisconsin Employment Relations Commission (WERC) under Wis. Stat. § 230.44(1)(c) if the appeal alleges the decision grieved was not based on just cause or under s. 230.45(1)(d) if the appeal alleges the denial of hazardous employment benefits under s. 230.36. Grievances may not be appealed to the WERC without first completing the relevant preceding steps in the grievance procedure. Office of State Employment Relations, Bureau of Labor Relations staff will represent the agency before the WERC.

Employees should contact their agency human resources office to find out who is the appropriate management designee for each step in the agency's grievance process.

Sec. 430.070 Action Grievable to Second Step Only

The following actions cannot be grieved beyond the second step:

1. Written reprimands; and
2. Grievances alleging the Employer abused its discretion in applying written agency rules, policies or procedures.

Sec. 430.080 Grievance Submittal and Response Time

A formal grievance must be filed with **and received by** the designated employer representative no later than 30 calendar days from the date the grievant first became aware, or should have become aware (with the exercise of reasonable diligence) of the matter grieved. If mailed, the postmark denotes the date of submittal or response. Grievances not appealed within the designated time limits at any step of the grievance procedure will be considered as having been adjudicated on the basis of the last preceding Employer answer. **Grievances which are not answered within the time limits may be grieved to the next step within ten (10) calendar days after the last day on which the grievance could have been timely answered.**

1. Informal resolutions are encouraged through a pre-filing process. Agencies have the discretion to adopt a pre-filing step as part of the grievance process. If a pre-filing meeting is held, the supervisor and employee should identify and discuss the matter in a mutual attempt to resolve the issue.
2. The Step 1 management designee must meet with the employee regarding a grievance (with the exception of a grievance containing any of the actions identified in Sec. 430.040, in which case a meeting is not required) and supply a written response on the grievance form and deliver it to the grievant within thirty (30) calendar days of receipt of the written grievance form from the employee. Grievance hearings may be conducted via teleconference or video conference at the discretion of the Employer.
3. If the grievant is dissatisfied with the answer in Step 1, the grievant must submit the grievance to Step 2 within ten (10) calendar days from receipt of the answer in Step 1 or within ten (10) calendar days of the date on which the response should have been answered if no response was issued at the first step of the process.

The Step 2 management designee must meet with the employee and supply a written response on the grievance form and deliver it to the grievant within thirty (30) calendar days of receipt of the grievance at Step 2. Grievance hearings may be conducted via teleconference or video conference at the discretion of the Employer.

4. If the grievant is dissatisfied with the answer in Step 2, the grievant must appeal to OSER within ten (10) calendar days from the date of the answer in Step 2 or within ten (10) calendar days of the date on which the response should have been answered. The appeal must:
 - a) Include the grievant's written appeal;
 - b) Include a copy of the grievance, including any and all copies of grievance responses;
 - c) Be postmarked or date stamped by OSER within the time frame specified above; and
 - d) Not be filed electronically.

OSER will review the grievance. If the grievance cannot be resolved, OSER shall send a written notice to the grievant within thirty (30) calendar days from receipt of the grievance at Step 3. The written notice will inform the grievant that grievances that have not been settled under the foregoing procedure may be appealed to the Wisconsin Employment Relations Commission under Wis. Stat. § 230.44(1)(c) if the appeal alleges the decision grievated was not based on just cause, or under s. 230.45(1)(d) if the appeal alleges the denial of hazardous employment benefits under s. 230.36.

5. Grievances which have not been settled under the foregoing procedure may be appealed to the Wisconsin Employment Relations Commission under Wis. Stat. § 230.44(1)(c), if appeal alleges the decision grievated was not based on just cause, or under s. 230.45(1)(d) if the appeal alleges the denial of hazardous employment benefits under s. 230.36. Such appeal must be made in writing and, notwithstanding Wis. Stat. § 230.44(3) or if applicable, PC 3.01, Wis. Adm. Code, filed (actual receipt at the Employment Relations Commission) within 30 calendar days after the date of OSER's notice issued at Step 3 or within thirty (30) calendar days from the date on which OSER's notice was due, whichever is sooner.

If an unresolved grievance is not appealed to the commission, it shall be considered terminated on the basis of the second step answer. The issue as stated by the grievant in the second step shall constitute the sole and entire subject matter to be heard by the commission, unless the parties agree to modify the scope of the hearing.

6. OSER, Bureau of Labor Relations staff shall represent the Employer in hearings before the WERC.

Sec. 430.090 WERC Appeal Filing Process

Section PC 3.03, Wis. Adm. Code, identifies the form and content required in WERC appeals. All appeals must be made in writing. There is no form that needs to be used in filing an appeal, but the appeal should include the following:

- (a) The grievant's address, telephone numbers, and e-mail address at work and at home;

- (b) The grievant representative's address, telephone numbers, and e-mail address at work and at home;
- (c) The name of the state agency that took the action being appealed;
- (d) The facts forming the basis for the appeal;
- (e) The reason the grievant believes the action to be improper;
- (f) The relief or remedy requested; and
- (g) A copy of the employer's last grievance response.

Sec. 430.100 Miscellaneous

1. A grievant may be assisted by a representative of his/her own choosing in person, by telephone, or by teleconference.
2. The grievant and the management designee can agree in writing to:
 - Waive a first step hearing.
 - Extend a time frame for filing or responding
3. The second step hearing cannot be waived.
4. A single grievance form may be used for more than one employee if the grievants are grieving the same issue or circumstance. The grievance is declared as a group grievance at Step 1 and is signed by all grieving employees.
5. The appointing authority may consolidate grievances where a reasonable basis for consolidation exists.
6. Limited Term Employees are prohibited from filing a grievance.

Sec. 430.110 Use of Paid Work Time by Employees for Investigating, Preparing, and Presenting Grievances

It is recognized that an employee who files a grievance may need time to prepare for the presentation of his/her case. Upon receiving reasonable notice the employer is required to permit a state employee and his/her representative a reasonable period of time, as determined by the appointing authority, during normal work hours to investigate, prepare, and present a grievance without loss of pay.

Any expense incurred by the grievant or his/her representative in investigating, preparing, or presenting a grievance shall be the sole responsibility of the grievant or representative.

Time spent preparing grievances outside the employee's regularly scheduled hours of work, or any travel or other expenses incurred by the grievant are not the responsibility of the employer.

Employees must be notified in writing of these grievance procedures and any changes that may occur through the agency's policies and procedures handbook or other format. Agency policies must identify, at a minimum, which positions in the agency are responsible for each of the first two steps, the time frames, the filing form, and any other requirements.

Sec. 430.120 Retaliation Prohibited

Agencies are prohibited from retaliating against a grievant, representative, or witness who participates, or is scheduled to participate, in proceedings for using the grievance procedure. The OSER Director can enforce this prohibition by order under s. 230.04(3), Wis. Stats.

Sec. 430.130 Limitations of Relief Granted

1. Agencies and the commission are prohibited from granting relief that is retroactive beyond 30 days immediately preceding the filing of the grievance at the first step.
2. Agencies and the commission are prohibited from awarding interest, attorney's fees or costs as relief granted pursuant to any grievance filed under this chapter through and including appeals to the WERC.

Sec. 430.140 Administrative Information

This chapter was originally issued in June 1997 as Chapter 340 of the *Wisconsin Personnel Manual*.

This chapter was revised and reissued in October 2001 as Chapter 430 of the *Wisconsin Human Resources Handbook*.

This chapter was revised and reissued In December 2003 to remove the references to the State Personnel Commission and insert references to the Wisconsin Employment Relations Commission.

This chapter was revised and reissued in December 2011 due to the enactment of 2011 Wisconsin Act 10 and approval of the 2011-13 Compensation Plan.

This chapter was revised and reissued in April 2012 to modify time frames and clarify the responsibilities of grievants.

Attachment: Employee Grievance Form

Grievance Step - circle one

1 2 3

No. - for Agency use only

EMPLOYEE GRIEVANCE REPORT

(TYPE OR PRINT WITH BALL POINT PEN-[press firmly])

If this is a group grievance, use name and classification of spokesperson and attach a sheet listing the names, classifications, and signatures of other grievants.

Name - Last, First, Middle Initial		Classification	
Agency	Division	Employing Unit	Work Unit
Work Unit Telephone		Headquarters location	Shift or Hours of Work

This grievance alleges violation of work rules, admin. code or agency policy: (Attach a copy of rules, admin. code or agency policy allegedly violated.) Describe the grievance - state all facts, including time, place of incident, names of persons involved, etc.	Type of grievance (check one):	<input type="checkbox"/> Individual
		<input type="checkbox"/> Group
		In a group grievance, names of all grievants must be listed and all of the grievants must sign the grievance.

Relief sought

Employee's Signature	Employee Representative's Signature (if applicable)	Date Submitted
Employee's Mailing Address and e-mail address	Employee Representative's Name (PRINT) (if applicable)	Employee Representative's Mailing Address and e-mail address (if applicable)

Employer's Decision

Employer's Signature	Title	Date Received	Date Returned
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INSTRUCTIONS

In the event that the employee is not satisfied with the supervisor's written decision, or if the supervisor does not return an answer within the time limits identified in Wisconsin Human Resources Handbook Chapter 430.080, the grievance must be appealed to the next higher step or appealed to the Wisconsin Employment Relations Commission within the time limits set forth in Wisconsin Human Resources Handbook Chapter 430.080.

GRIEVANCE MUST BE FILED ON THIS FORM

Complete this report following instructions. Detach third copy (pink) and submit rest of set to the proper representative of your employer.

See Wisconsin Human Resources Handbook Chapter 430.080, for time limits for presenting and acting on grievances. Failure to observe these time limits will result in loss of appeal rights.