

## Chapter ERB 12

## PREVENTION OF PROHIBITED PRACTICES

(s. 111.70, Stats.)

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**ERB 12.01 Scope.** This chapter governs the general procedure relating to prohibited practices proscribed by s. 111.70, Stats.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62.

**RB 12.02 Complaint.** (1) **WHO MAY FILE; FORM AND JURAT; NUMBER OF COPIES; FILING FEE.** A complaint that any municipal employer, its officers or agents, or municipal employes, individually or in concert with others, have engaged in or are engaging in any prohibited practices as defined in s. 111.70(3), Stats., may be filed by any party in interest. Such complaint shall be in writing upon a form provided by the commission, or a facsimile thereof; the original being signed and sworn to before any person authorized to administer oaths or acknowledgements. Four additional copies of the complaint shall be filed, together with one additional copy for each named party. At the time of filing, the filing fee established by s. 111.71(2), Stats., shall accompany the complaint.

(2) **CONTENTS.** Such complaint shall contain the following:

(a) The name, address, and affiliation, if any, of the complainant, and of any representative thereof.

(b) The name and address of the respondent or respondents, and any other party named therein.

(c) A clear and concise statement of the facts constituting the alleged prohibited practice or practices, including the time and place of occurrence of particular acts and the sections of the statute alleged to have been violated thereby.

(d) A prayer for specific and general relief.

(e) A statement that the filing fee established by s. 111.71(2), Stats., accompanies the complaint.

(3) **SERVICE; NOTICE OF HEARING.** On the filing of a complaint, the commission shall immediately serve, upon the respondent or respondents and all parties in interest, a copy thereof, and a notice of hearing, at a place therein fixed, by registered or certified mail to such parties at their last known post-office address.

(4) **WITHDRAWAL.** Any such complaint may be withdrawn at any time prior to the issuance of a final order based thereon, upon motion granted by the commission.

(5) **AMENDMENT.** (a) *Who may amend.* Any complainant may amend the complaint upon motion, prior to the hearing by the commission; during the hearing by the commission if it is conducting the hearing, or by the commission member or examiner authorized by the board to conduct the hearing; and at any time prior to the issuance of an order based thereon by the commission, or commission member or examiner authorized to issue and make findings and orders.

(b) *Conformance to evidence.* At the conclusion of the hearing, the complaint, on motion, may be amended as necessary to conform to the evidence as to minor and immaterial variances which might appear in the record.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), (3), (4), (5) (a), Register, March, 1971, No. 183, eff. 4-1-71; am. (1) and (2) (c), cr. (2) (e), Register, June, 1982, No. 318, eff. 7-1-82.

**ERB 12.03 Answer to complaint.** (1) **WHO SHALL FILE; FORM AND JURAT; NUMBER OF COPIES.** The respondent shall, and any other party named in the complaint may, file with the commission the original and four copies of an answer, the original being sworn to, on or before the date designated therefor in the notice of hearing.

(2) **SERVICE.** Copies of the answer shall be served by the respondent or other parties upon the complainant or other parties who are designated in the notice of hearing as required to be served, on or before the date designated therefor in the notice of hearing.

(3) **MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN.** If a complaint is alleged to be so indefinite as to hamper the respondent or any other party in the preparation of its answer to the complaint such party may, within 5 days after the service of the complaint, by motion request the commission to order the complainant to file a statement supplying specified information to make the complaint more definite and certain.

(4) **CONTENTS.** The answer shall contain the following:

(a) A specific admission, denial, or explanation of each allegation of the complaint, or if the filing party is without knowledge thereof, he shall so state to that effect, such statement operating as a denial; admissions or denials may be to all or part of an allegation but shall fairly meet the substance of the allegation.

(b) A specific detailed statement of any affirmative defense.

(c) A clear and concise statement of the facts and matters of law relied upon.

(5) **AMENDMENT.** The respondent may, for good cause shown, amend his answer at any time prior to the hearing. During the hearing and prior to the issuance of the order, he may amend his answer where the complaint has been amended, within such period of time as may be fixed by the commission, or by the commission member or examiner authorized by the commission to conduct the hearing. Whether or not the complaint has been amended, the answer may, upon motion granted, be amended

upon such terms and within such period as may be fixed by the commission, commission member or examiner, as the case may be.

(6) **ADMISSIONS BY FAILURE TO ANSWER.** Failure to file a timely answer, in the absence of extenuating circumstances recognized by the commission, constitutes an admission of and a waiver by such party of a hearing as to the material facts alleged in the complaint.

(7) **ADMISSIONS BY INSUFFICIENT ANSWER; BY ADMISSIONS IN ANSWER.** Failure of a party filing an answer specifically to deny or explain therein a material allegation of the complaint shall constitute an admission of and a waiver by such party of a hearing as to the facts admitted.

*History:* Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), (3), (5) and (6), Register, March, 1971, No. 183, eff. 4-1-71.

**ERB 12.04 Hearings.** (1) **SCOPE.** Hearings shall be limited by the commission, commission member, or examiner, as the case might be, to the litigation of and oral argument on genuine issues of fact or law raised by the parties and remaining for disposition.

(2) **WHEN SCHEDULED.** Hearing on a complaint shall be set on a date not less than 10 days nor more than 40 days after the filing of the complaint and may be rescheduled as provided in these rules.

(3) **BEFORE WHOM HELD.** The hearing may be held by the full commission, or any member or members thereof or examiner acting on behalf of the commission. A single member or examiner appointed by the commission may be authorized by an order of the commission to make findings of fact, conclusions of law and order.

*History:* Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (3), Register, March, 1971, No. 183, eff. 4-1-71.

**ERB 12.05 Filing of briefs and proposed findings.** Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions or both at such time as fixed by the board member or examiner conducting the hearing, who may direct the filing of briefs when he deems such filing warranted by the nature of the proceeding or particular issues therein.

*History:* Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERB 12.06 Findings of fact, conclusions of law and order.** (1) **ISSUANCE.** After the close of the hearing, or upon granting a motion for dismissal of a complaint, the commission, or single member or examiner, if authorized to do so, shall make and file findings of fact, conclusions of law and order. Following a hearing conducted by a single member or examiner on behalf of the commission, where the single member or examiner has not been authorized to issue findings of fact, conclusions of law and order, the single member or examiner, as the case may be, shall prior to the issuance of findings of fact, conclusions of law and order by the commission, participate in discussions with the commission where the credibility of a witness or witnesses is a substantial element in the proceeding.

(2) **CONTENTS.** The findings of fact, and conclusions of law shall be made upon all material issues of fact and law presented on the record. The order, which shall state the determination as to the rights of the parties, may dismiss or may sustain the complaint in whole or in part or require the respondent to cease and desist from the prohibited practices

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found and take such affirmative action as will effectuate the policies of s. 111.70, Stats.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), Register, March, 1971, No. 183, eff. 4-1-71.

**ERB 12.07 Interlocutory findings of fact, conclusions of law and order.** The commission may, after the close of the hearing and pending the final determination by it of any controversy, make and issue interlocutory findings of fact, conclusions of law and order, when it deems that such will effectuate the policies of s. 111.70, Stats., which may be enforced in the same manner as final orders.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERB 12.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.** The commission on its own motion, or the single member or examiner having authority to issue findings of fact, conclusions of law and order, on his own motion, as the case may be, may set aside, modify, change or reverse any findings of fact, conclusions of law and order, at any time within 20 days from the date of the issue and mailing thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence, provided, in case of the single member or examiner, no petition for review has been filed with the commission.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERB 12.09 Review of findings of fact, conclusions of law and order issued by single member or examiner.** (1) **RIGHT TO FILE, TIME.** Within 20 days from the date that a copy of the findings of fact, conclusions of law and order of the single member or examiner was mailed to the last known address of the parties in interest, any party in interest, who is dissatisfied with such findings of fact, conclusions of law and order, may file a written petition with the commission, and at the same time cause copies thereof to be served upon the other parties, to review such findings of fact, conclusions of law and order. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings of fact, conclusions of law and order, it may extend time another 20 days for filing the petition for review.

(2) **PETITION FOR REVIEW; BASIS FOR AND CONTENTS OF.** The petition for review shall briefly state the grounds of dissatisfaction with the findings of fact, conclusions of law and order, and such review may be requested on the following grounds:

(a) That any finding of material fact is clearly erroneous as established by the clear and satisfactory preponderance of the evidence and prejudicially affects the rights of the petitioner, designating all relevant portions of the record.

(b) That a substantial question of law or administrative policy is raised by any necessary legal conclusions in such order.

(c) That the conduct of the hearing or the preparation of the findings of fact, conclusions of law and order involved a prejudicial procedural Register, October, 1986, No. 370

error, specifying in detail the nature thereof and designated portions of the record, if appropriate.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), Register, March, 1971, No. 183, eff. 4-1-71.