

Chapter PC 4

EQUAL RIGHTS PROCEEDINGS

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PC 4.01 Scope of investigatory power. Pursuant to ss. 230.45 (1) (b) and 111.33 (2), Stats., the commission may, in response to timely filed complaints of discrimination, conduct investigations, undertake conciliations and settlements, and hold hearings to enforce with respect to state agencies the fair employment mandate set forth in subch. II of ch. 111, Stats. If after hearing the commission finds that the respondent agency has engaged in discrimination, it shall make written findings and order such action by the respondent as will effectuate the purposes of subch. II, ch. 111, with or without back pay.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.

PC 4.02 Complaints. (1) **CONTENT.** Complaints shall be in writing, shall be signed and notarized and shall contain the following information:

- (a) Name and address of complainant.
- (b) Type of discrimination alleged (age, race, color, handicap, sex, creed, national origin, ancestry, retaliation, arrest record or conviction record).
- (c) The name, title, agency or department charged with the unlawful discriminatory practice or act.
- (d) The facts which constitute the alleged unlawful discriminatory practice or act.
- (e) The relief or remedy requested, if determined.
- (f) Notarized signature.
- (lm) If requested by the complainant, the commission's office will assist in preparing and will notarize complaints.

(2) **FILING.** Complaints shall be filed with the State Personnel Commission, 131 West Wilson Street, Madison, Wisconsin 53702. In accordance with s. 230.44 (3), Stats., complaints must be filed within 300 calendar days after the alleged discrimination occurred. At the complainant's request, a copy of the complaint shall be filed with the appropriate federal agency.

(3) **RETALIATION.** Complaints of harrassment and retaliation because of opposition to discriminatory practices under subch. II, ch. 111, Stats., or because of previously filed complaints, testimony or assistance in any proceeding under subch. II, ch. 111, will be received and processed in the same manner as other complaints.

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(4) **AMENDMENT AND WITHDRAWAL.** Subject to the approval of the commission, a complaint may be amended or withdrawn.

(5) **NOTICE TO THE RESPONDENT.** (a) Prior to a determination as to probable cause, disclosure of the identity of the complainant and the specific allegations shall be discretionary with the commission, where deemed necessary to protect the employe's anonymity pursuant to s. 111.33 (1), Stats.

(b) Where the anonymity provision of s. 111.33 (1) Stats. is not applicable, a copy of the complaint shall be served on the respondent prior to the commencement of an investigation.

(c) When the commission determines the need to preserve the employe's anonymity, the commission shall serve the respondent with a general statement as to the charge of discrimination that has been filed.

(d) Notice under this subsection shall be provided to the head of the agency.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.

PC 4.03 Initial determinations. (1) **INVESTIGATION AND REPORT.** The commission shall promptly investigate all duly filed complaints and make an initial determination whether or not there is probable cause to believe that discrimination has been or is being committed. A report setting forth the basis for such determination shall be prepared by the commission, except as provided in section PC 4.05, Wis. Adm. Code.

(2) **PROBABLE CAUSE DEFINED.** Probable cause exists when there is reasonable ground for belief supported by facts or circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

(3) **NO PROBABLE CAUSE DETERMINATIONS.** When there is an initial determination of no probable cause to believe that discrimination has been or is being committed, notice thereof shall be served upon the parties, together with copies of the complaint and the initial determination. Within 30 calendar days after the date of such service, the complainant may petition the commission for a hearing on the issue of probable cause wherein the commission may affirm or reverse the initial determination. If reversed, the matter shall then be set for conciliation or hearing in conformance with PC 4.04 or PC 4.07, Wis. Adm. Code.

(4) **PROBABLE CAUSE DETERMINATION.** When there is an initial determination of probable cause to believe that discrimination has been or is being committed, notice thereof shall be served on the parties, together with copies of the complaint and the initial determination, and the case may be referred for conciliation in accordance with section PC 4.04, Wis. Adm. Code.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.

PC 4.04 Conciliations. When there is an initial determination of probable cause to believe that discrimination has been or is being committed, or the commission has made a finding of probable cause under section PC 4.03 (3), Wis. Adm. Code, the commission may immediately notify the parties of the initial determination and endeavor to eliminate the discriminatory practice or recompense the discriminatory act by conciliation or persuasion. Proceedings under this section shall be

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scheduled within 30 calendar days from the date of service of the initial determination of probable cause unless waived by either party. During conciliations, the pay status of employe complainants shall be the same as provided in PC 1.10 (2), Wis. Adm. Code.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.

PC 4.05 Predetermination settlements. Notwithstanding the other provisions of this chapter, the commission may, at any time prior to notifying the parties of the initial determination as to probable cause, convene the parties and attempt to effect a predetermination settlement. If agreement on such a settlement is reached and the terms thereof are satisfied by the parties, the complaint may be dismissed by the commission without a determination as to probable cause.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.

PC 4.06 Conciliation or settlement agreement. If, as a result of conciliation or predetermination settlement the commission is able to resolve a complaint, a written conciliation agreement or settlement agreement shall be prepared which sets forth all measures to be taken by any party. This agreement shall be enforceable by the commission or by either party as set forth in subch. II, ch. 111, Stats.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.

PC 4.07 Hearings on the merits. (1) PROCEDURE. If, after a determination of probable cause, the commission is unable to eliminate the alleged discriminatory practice or act through conciliation, it shall issue and serve a written notice of hearing. The notice shall require that the respondent answer the allegations in the complaint at a hearing before the commission. Hearings under this subsection shall be conducted according to the procedures in chapter PC 3, and may be preceded by a prehearing conference as described in section PC 1.05, Wis. Adm. Code. Names of witnesses and copies of exhibits shall be served and filed in accordance with section PC 2.01, Wis. Adm. Code.

(2) NOTICE OF HEARING. The notice shall specify a place and time of hearing not less than 30 calendar days after the service of the notice of hearing and the investigative report. Service of the notice and hearing and complaint shall be in accordance with section PC 1.08, Wis. Adm. Code.

(3) ANSWERS. An answer shall be a written statement which denies such allegations as are controverted by the respondent or as to which the respondent has insufficient information or knowledge to form a belief, admits others, and asserts any matter constituting a defense. Answers are not mandatory but are encouraged if the agency has not taken a position as to the subject matter in the investigative report prior to its service.

History: Cr. Register, March, 1980, No. 291, eff. 4-1-80.