



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-092

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

1. Statutory Authority

Under what authority does the department propose to require the posting of whistleblower posters as provided in s. DWD 224.24?

2. Form, Style and Placement in Administrative Code

a. It would appear that the last sentence of s. DWD 224.03 (5) would be better placed in s. DWD 224.06 (2).

b. The entire rule should be reviewed to ensure that all provisions are written in the active voice. [See s. 1.01 (1), Manual.] For example, the last sentence of s. DWD 225.09 (1) and the sixth sentence of s. DWD 225.09 (2) should begin “The division shall...”

c. In the treatment clause of SECTION 16 of the rule, s. DWD 225.14 (2) is not listed as being amended yet the text clearly amends the provision. The treatment clause should be changed accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. DWD 224.03 (2), the rule indicates that a complaint may be filed in person with any division office or mailed to one of two listed division offices. Are there more than two division offices in the state? If so, a note should be included in the rule as to where the other division offices are located. If, on the other hand, there are only two division offices, sub. (2) (intro.) should be redrafted to reflect that fact.

b. In s. DWD 224.06 (1) (d), the rule would be made more clear if the appropriate time period were more clearly identified by a narrower cross-reference. For example, the appropriate time period might be better identified by a cross-reference to s. 230.85 (1), Stats.

c. In s. DWD 224.21 (3), the phrase “as shall effectuate the purposes of subch. III of ch. 230, Stats.” could be made more precise by amending the rule to provide that the administrative law judge may order “an appropriate action, including actions listed in s. 230.85 (3) (a), Stats.”

d. Although the treatment of the rules of the Personnel Commission in SECTION 18 of the rule may be effective in achieving the department’s intent, it is suggested that substantive provisions of the rule be amended to include a statement that they, rather than the applicable provisions in the rules of the Personnel Commission, apply in actions by state employees filed under the various statutory provisions. As SECTION 18 is drafted, it gives no guidance to the Revisor of Statutes on what portions of the Personnel Commission’s rules should be removed from the Wisconsin Administrative Code. Will all of the Personnel Commission’s rules eventually be totally repealed?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section DWD 218.02 (2m) defines “agency.” It appears that it may be easier and more accurate to use the definition of “agency” as provided in s. 111.32 (6) (a), Stats., as that is the definition that applies to Fair Employment Act actions. In addition, in s. DWD 218.02 (9), the term “state” need not be used to modify “agency” as the definition of “agency” is limited to state agencies.

b. In s. DWD 218.15 (1), the phrase “state civil service employees” could be more clear by referring instead to “employees of the civil service as defined in s. 230.03 (6), Stats.”

c. Chapter 230, Stats., contains a definition of the term “agency” which applies to the whistleblower protections afforded under subch. III of that chapter. Accordingly, it would appear that the use of the cross-reference to that statutory provision would be more accurate in s. DWD 224.02 (2). In the alternative, it may be appropriate to define the term “governmental unit” as defined in s. 230.80 (4), Stats.

d. In s. DWD 224.02 (8), the phrase “but is not limited to” is not necessary and should be deleted.

e. In s. DWD 224.02 (10), the use of the term “state” to modify the term “agency” is unnecessary as the definition of “agency” is limited to state agencies.

f. It is noted that 2003 Wisconsin Act 33 gave primary responsibility for the enforcement of the state’s whistleblower protections to the Division of Equal Rights within the Department of Workforce Development. It is curious that throughout ch. DWD 224, as created by the rule, the rule consistently refers to “department” when one might suspect that it should refer to “division.” The rule should be reviewed for references to the appropriate oversight body of the whistleblower law.

g. In s. DWD 224.13 (2), the use of the term “averment” should be changed to the term “allegation” as the latter term is used consistently in other places in the provision. In addition, the phrase “without limitation” in the second-to-the-last sentence is unnecessary and should be deleted.

h. In s. DWD 224.15 (2), the term “must” should be changed to the term “shall.”

i. In s. DWD 224.15 (4), the first sentence should be rewritten substantially as follows: “The administrative law judge may compel discovery, issue protective orders, and impose sanctions in the manner provided under ch. 804, Stats.” In addition, in the second sentence, the term “must” should be changed to the term “shall.”

j. Is it to be understood from the second sentence of s. DWD 224.18, that service, including “service of the complaint upon the respondent” as defined in s. DWD 224.02 (12), is only complete upon receipt? This should be clarified.

k. In s. DWD 224.20 (3), “If” should replace “Where.”

l. In s. DWD 224.21 (2), in the last sentence, the word “will” should be changed to “shall.”

m. In s. DWD 224.22 (1), the phrase “are appealable” should be changed to “may be appealed.”

n. In s. DWD 224.23 (3), the word “are” should be changed to “shall be.”

o. In s. DWD 225.10 (1), the word “will” should be changed to the word “shall.”

p. In s. DWD 225.23 (3), the word “are” should be changed to “shall be.”